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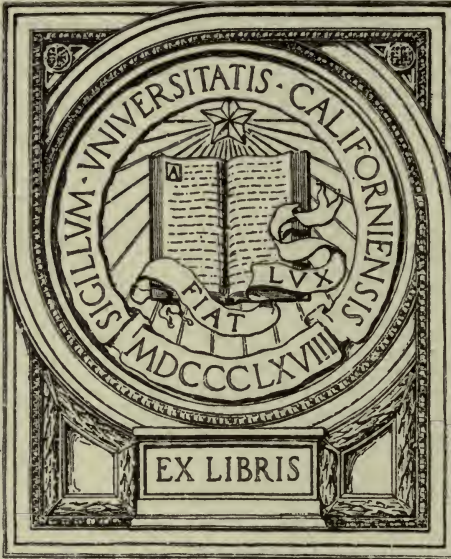
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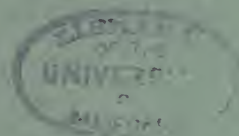
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THE
SCHOOL LAWS
OF
SOUTH DAKOTA



ANNOTATED EDITION

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THE
SCHOOL LAWS
OF
SOUTH DAKOTA

ANNOTATED EDITION

Compiled, Annotated and Indexed by J. Fred Olander

LIST OF
CONTENTS

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LB2529

S. 83

1911

The present edition of the School Law of the state is a complete codification of all political, civil and criminal laws dealing with the affairs of the state in an educational way. This also includes all decisions by the supreme court and opinions rendered by the several attorneys general to date.

All sections not otherwise credited were enacted into law by the 1907 session of the State Legislature.

J. FRED OLANDER.

NO. 1111
APPROVED

A. M. C.

THE SCHOOL LAW OF SOUTH DAKOTA

ESTABLISHING A UNIFORM SYSTEM OF EDUCATION FOR THE
STATE OF SOUTH DAKOTA

ARTICLE I

Department of Public Instruction

Section 1. State Supervision] The superintendent of public instruction shall be charged with the general supervision of all the county schools and the high schools and of all the city and county superintendents of the state.

Sec. 2. Superintendent—Duties of] He shall meet the county superintendents in convention at least once each year at such points in the state as he may deem most suitable for that purpose and by explanation and discussion endeavor to secure a more uniform and efficient administration of the school laws.

Sec. 3. He, personally or by an assistant, shall inspect all high schools and shall have the power to accredit them to higher institutions or learning.

Sec. 4. The state superintendent of public instruction shall render a written opinion to any county superintendent asking it, touching the exposition or administration of the school law, and shall determine all cases relating to the revocation of certificates appealed from the county superintendent. (Session Laws 1909.)

Sec. 5. All necessary blanks to be used in transacting the business between county or city superintendents and the state superintendent shall be supplied by the state superintendent. He shall also com-

pile a book of forms or blanks not furnished by the state, and all blanks used in a county or district must correspond with a form in such book.

Sec. 6. On or before the thirtieth day of October preceding each regular session of the legislature, he shall present a biennial report to the governor, which report shall show the condition and needs of the public schools throughout the state and the workings of the educational system of the state.

Sec. 7. He shall attend teachers' institutes in the several counties in the state as far as may be consistent with other duties imposed by law, and assist by lecture or otherwise in their instruction or management. The state superintendent shall prescribe rules and regulations for holding county normal institutes.

Sec. 8. He shall on or before March 1st in each year, prepare and send to each county superintendent a list of the names of institute conductors, and county superintendents shall engage conductors for their county normal institutes from the list sent by the superintendent of public instruction.

Sec. 9. He shall on or before the 1st day of April of each year call a meeting of the county institute conductors for the purpose of exchanging views relative to the best methods of teaching and for outlining, as far as practicable, a general plan for institute work.

Sec. 10. Examinations] Public examination for state certificates and life diplomas shall be held by the superintendent of public instruction at least twice each year, at such time and places as he shall select with a view to the accommodation of applicants for such certificates.

Sec. 11. It shall be his duty to prepare all questions for the examination of teachers by the county superintendents, and no county superintendent shall examine teachers with questions not thus furnished. Whosoever shall sell, barter or give away to applicants for certificates or to any other person the questions prepared by the superintendent of public instruction to be used by the county superintendents in the examination of teachers shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars or more than one hundred dollars.

Sec. 12. State Certificates and Life Diplomas] The superintendent of Public Instruction may issue two professional certificates, the state certificate and the life diploma, as hereinafter provided. He shall keep a full record of all certificates issued by him and carefully file in his office all papers relating thereto and preserve said papers for the period for which the certificates were issued respectively. He

shall subsequent to each examination, send to each county superintendent a list of persons receiving certificates.

Sec. 13. Life Diploma] A life diploma shall be valid during good behavior and shall authorize the holder thereof to teach in any public school of the state. Applicants shall, by examination or otherwise show satisfactory proficiency in the following branches: Reading, orthography, penmanship, arithmetic, grammar, composition, geography, United States history, including South Dakota history, civics and physiology and hygiene and shall pass a satisfactory examination in physical geography, physics, algebra, geometry, general history of the pre-college grade, and in English language, and rhetoric, English and American literature, either economics or sociology, any two of botany, zoology, physiology, physics, chemistry, Latin, German, geology and mineralogy, astronomy, algebra and trigonometry, all of the college grade and pedagogy including principles, method, management, psychology, and history of education.

Provided, that a diploma from the state university of South Dakota or from any approved college having a regular course of study in which at least four years' work above an approved four year high school course is required, may be accepted in lieu of an examination in the subjects named; if the applicant has in his college course pursued one course of pedagogical studies, and professional training comprising at least one-fourth work during at least eighteen months. In case the holder of such diploma has not taken the required work in pedagogy the deficiency may be made good by examination.

Provided further, that a diploma from any state normal school having a regular course of study in which at least two years' work above an approved four year high school course is required, or from any other normal school having a regular course of study of the same extent and similar in character may be accepted in lieu of an examination in the subjects named.

An applicant for a life diploma by examination or otherwise must present evidence of at least forty months' successful experience in teaching and satisfactory evidence of good moral character.

An applicant for a life diploma upon college or normal school credentials shall present a certified copy of his diploma accompanied by a certified copy of the course of study pursued specifically showing the amount of class work in each subject, together with the standing in each branch.

Sec. 14. State Certificate] A state certificate shall authorize the person to whom it is issued to teach in any of the public schools of the state for the period of five years. Applicants for such state certificate shall, by examination or otherwise, show satisfactory proficiency in orthography, reading, penmanship, arithmetic, geography, English grammar, physiology and hygiene, United States history in-

cluding South Dakota history, and shall pass a satisfactory examination in civil government, American literature, drawing, algebra, plane geometry, physical geography, physics or botany, general history, pedagogy and English language, composition and rhetoric. He must also present evidence of twenty-four months' successful experience in teaching.

Provided, that a diploma from any state Normal School of South Dakota, having a course of study in which at least two year's work above an approved four year high school course is required, may be accepted in lieu of an examination in the subjects named. Provided further, that a diploma from any other school having a course of study equivalent in extent and similar in character, may be accepted in lieu of an examination in the subjects named.

Provided, further, that applicant for the state certificate, upon Normal or other school credentials, must show that the course of study pursued therein contained a course of at least eighteen months of pedagogy and professional training, comprising at least one-fourth work for said time. They shall present their credentials to the department of education in the same manner as is provided for applicants for life diploma. An applicant who presents evidence of graduation from a normal or other school shall also present evidence of eighteen months' successful experience in teaching before being entitled to said certificate, provided that the superintendent of public instruction may issue to such applicant a provisional certificate for such probationary period. Every applicant for a state certificate shall submit satisfactory evidence of good moral character. (Chapter 136 Session Laws 1911.)

Sec. 15. Renewal, Validation, and Revocation of Certificate]

The superintendent of public instruction may renew a state certificate upon the presentation by the applicant of satisfactory evidence of continued and successful experience as a teacher and satisfactory evidence of full attendance at a county institute held the current year. He may similarly renew a first grade certificate and primary certificate.

Provided, that a certificate which is permitted to lapse more than one year shall not be renewable.

The state superintendent may validate certificates issued by other state departments of the United States of the rank of the life diploma, state certificate, first grade or second grade certificate in this state, provided that the requirements upon which they are issued are equivalent to the requirements for corresponding certificates in South Dakota.

State certificates and life diplomas shall be revoked by the superintendent of public instruction for any of the causes enumerated in section 64 of the revocation of certificates by county superintendents, and in a manner similar thereto. (Session Laws 1909.)

Life diplomas issued prior to the enactment of the compulsory institute attendance law may be revoked. Opinion by Philo Hall, Attorney General.

Sec. 16. Applicants for a life diploma, except resident graduates of the schools of this state, shall pay a fee of ten dollars (\$10.00), and similarly, applicants for a State certificate shall pay a fee of five dollars (\$5.00), and for a provisional State certificate two dollars (\$2.00); provided, that should an applicant fail in such examination one-half of the fee shall be returned.

A resident graduate is entitled to a diploma or state certificate without fee, even though he may have subsequently attended and graduated from other similar schools outside of the state. Opinion by Philo Hall, Attorney General.

All these fees shall be forwarded to the State Department of Public Instruction and the State Superintendent shall pay the same into the State Treasury, which, with the money now on hand, derived from this source, shall constitute a fund to be known as the State Professional Fund, and the moneys so collected shall be paid out only upon the warrant of the State Auditor, issued on vouchers of the Superintendent of Public Instruction, approved by the Governor.

Said State Professional Fund shall be used for the purpose of conducting investigations, and gathering data of the progress of education in this state and elsewhere; to publish such data and the results of such investigations and to distribute the same to teachers, citizens and others, and for furthering in other ways the profession of teaching. (Chapter 144 Session Laws 1911.)

Sec. 17. Teachers' Reading Circle Board of Managers] The Teachers' Reading Circle Board of Managers shall consist of the president of the state educational association, the superintendent of public instruction and a member elected by the county superintendents of the state.

The president of the State Educational Association shall be the president of the board and the members of the board shall elect a secretary who shall not be of their number and who shall have no voice in the proceedings of the board. The secretary shall receive such salary as may be fixed by the board who shall also prescribe his duties. The board of managers of the Teachers' Reading Circle shall hold at least one meeting each year to select the books to be read, and shall have general charge of the Teachers' Reading Circle work in the state. The members of the board of managers shall receive no compensation but their actual traveling expenses incurred in the discharge of their duties shall be paid from the fees collected for state certificates and life diplomas in the manner hereinbefore provided.

Sec. 18. Office Provided] An office shall be provided for him at the seat of government in which he shall file all papers, reports and public documents transmitted to him by the county superintendents each year, separately, and hold the same in readiness to be ex-

hibited to the governor or a committee of either house of the legislature at any time when required, and he shall keep a faithful record of all matters pertaining to his office. All books presented to his office or purchased therefor shall be carefully preserved and catalogued by him. The educational library thus formed shall be open to the teachers of the state for reference and examination.

Sec. 19. Deputy Superintendent] He shall have the power to appoint a deputy who shall perform such duties pertaining to the office as the superintendent may direct and who shall receive such salary as the deputies of the other state officers.

The salary of the deputy superintendent of public instruction may be diminished or increased during his term of office as he has no definite term, but only during the pleasure of his principal. *Somers v. State*, 5 S. D. 584.

Sec. 20. Salary of Superintendent] He shall receive such salary as is prescribed by law and also a sum not exceeding fifteen hundred dollars per annum for traveling and other expenses while traveling on the business of the department. The traveling expense account and certified bills for necessary office expenses and for the printing of such blanks and reports as are required by law, shall be paid on the warrant of the state auditor.

ARTICLE II

County Supervision

Sec. 21. Election of Superintendent] In each organized county at the first general election held after the admission of the state of South Dakota into the Union, and every two years thereafter there shall be elected a superintendent of schools whose term shall be two years, and no person shall be eligible for more than four years in succession.

Sec. 22. Eligibility]. No person shall be eligible to hold the office of county superintendent who is not the holder of a regular first grade certificate or a certificate of higher grade valid in the state at the date of his induction into such office and at least one year previous thereto.

That if any person shall file any statement on oath, with the county auditor 15 days prior to the holding of any primary election, or other election, that any person whose name has been certified to the county auditor as a candidate for county superintendent upon any ticket is not qualified under the provisions of this act to hold the office of county superintendent, said candidate shall within five days

after being notified of said statement being filed, file with the county auditor full proof that he is qualified to hold said office, and if he fails to do so, the name of said person shall not be placed upon the official ballot as a candidate by the county auditor. (Session Laws 1909.)

Sec. 23. Qualification]. The county superintendent shall qualify on or before the first Tuesday in January of the year following the one in which he is elected, by taking the proper oath of office, and executing a bond in the sum of five hundred dollars with two or more sureties to be approved by the board of county commissioners. The oath shall be subscribed upon the back of the bond, which shall be filed with the county auditor. The sureties of such bond shall be bound jointly and severally, and upon it an action or actions may be maintained by the board of county commissioners for the benefit of the district or person or fund injured by the conditions thereof.

Sec. 24. When the office of county superintendent shall become vacant by death, resignation, removal or otherwise, the county board of commissioners shall fill the vacancy by appointment, and the person so appointed shall hold his office until the election of county officers.

Sec. 25. Deputy County Superintendent] In counties having more than seventy-five schools the county superintendent shall have power to appoint one deputy, who shall receive such compensation as the county commissioners may provide.

In determining the number of schools in a county the several departments of a graded school should not be counted as schools, but the graded school of the city or town should be counted as one school. Opinion by S. W. Clark, Attorney General.

In counties having more than seventy-five schools the county superintendent has power to appoint deputy and the county commissioners must provide a just compensation. They cannot defeat this provision by allowing a small compensation. Opinion by S. W. Clark, Attorney General.

Sec. 26. Prohibition From Holding Other Offices] The county superintendent shall not hold the office of county commissioner or school district officer.

Sec. 27. Salary] The county superintendent shall receive a salary payable monthly and to be determined as follows: By the value of the property in their respective counties as fixed by the state board of equalization for the preceding year and by the population of their respective counties.

The salary of the county superintendent is fixed by the board of county commissioners at their January meeting each year, but is payable monthly. Opinion by S. W. Clark, Attorney General.

He shall be entitled to receive one mill on each dollar of the first one hundred thousand dollars, and three-eighths of one mill on each dollar from one hundred thousand dollars to six hundred thousand dollars, and one-fourth of one mill on each dollar from six hundred thousand dollars to one million, one hundred thousand dollars;

and one-tenth of one mill on each dollar from one million, one hundred thousand dollars to two million, six hundred thousand dollars; and one twentieth of one mill on each dollar on all sums above two million, six hundred thousand dollars. And in addition to the above named sum he shall receive for the first one thousand inhabitants within his county the sum of seventy-five dollars, for each additional one thousand inhabitants within the county, or major fraction thereof, he shall receive fifty dollars;

Provided, that he shall not receive more than fifteen hundred in any county nor any other compensation, except as provided in section 52.

Provided further, that in counties having an assessed valuation of less than three hundred thousand dollars, the salary shall not exceed two hundred dollars.

Sec. 28. Penalty] The county superintendent shall sign his name in the attendance register of each school he visits, showing date thereof; and he shall carry a record book of such visits, which book shall be signed by the teacher of the school visited by him, and such book shall be filed with the county auditor along with the bill of such superintendent's salary for the last month of the calendar year; and it shall be the duty of the county commissioners to deduct from the salary of such superintendent for such last month ten dollars for each and every school in the county under the direct supervision of such superintendent and not visited by him within such calendar year.

Sec. 29. Mileage Allowed] The county superintendent shall receive five cents per mile each way for every mile necessarily traveled in attending such meeting of county superintendents as may be convened by the state superintendent at any time.

Provided, that such mileage shall not be regarded as compensation.

Sec. 30. Provide Office] The county superintendent may provide at the county seat a suitable office for the transaction of business, when not provided by the board of county commissioners, and they shall allow accounts for all necessary expenditures for the use and furnishing of said office and for necessary stationery and printing. All books and pamphlets, circulars of information and other publications from the bureau of information of the United States and all official publications of this state and other public documents and books relating to education, officially received by him, shall be deemed public property and shall be kept in his office, and, with other public property and records, delivered to his successor. He shall furnish the board of county commissioners such statistics relating to the schools of the county and the officers thereof as they shall desire, and as shall enable them to perform their duties correctly.

Sec. 31. Duties of County Superintendent] The county superintendent of schools shall be charged with the general supervision of the schools of his county. In towns having less than one thousand inhabitants he shall have authority of direct supervision.

Sec. 32. He shall visit each school in his county as frequently as possible, at least once each school year, correcting any deficiency that may exist in the government of the school, in the classification of the pupils, or in the methods of instruction in the several branches taught; make such suggestions as he shall deem proper and necessary for the welfare of the school; note the character and condition of the school house, furniture, apparatus and grounds, making such suggestions to the district officers as will in his opinion improve the same. In case of flagrant or wilful neglect on the part of the school board to make the necessary repairs for the school or to correct unsanitary conditions or provide suitable water closets according to section 109 of the article relating to powers and duties of the district school board, within thirty days after written notice, he shall have power to order such repairs and changes as he may deem necessary and the school district shall pay expenses thus incurred from the district treasury, not to exceed \$50.00 in any one year.

Sec. 33. He shall keep a complete record of his official acts.

Sec. 34. He shall keep a record of the name, age and postoffice address of each candidate for a certificate to teach, standing in each study, and the grade, date of issue and expiration of each certificate granted. He shall keep on file the papers of applicants for special certificates at least for the periods for which a certificate is granted.

Sec. 35. He shall keep a register of the teachers employed in his county giving the name of teachers, district in which employed, date of opening and closing terms, salary per month, grade of certificate and date of superintendent's visits.

Sec. 36. He shall keep a record of all apportionments of the state and county school funds, and such other statistical records as shall be required in making reports to the superintendent of public instruction. In addition to his annual report he shall, whenever called upon by the superintendent of public instruction, make such special reports as may be required.

Sec. 37. The county superintendent of schools shall encourage teachers' institutes and associations, and shall labor in every practicable way to elevate the standard of teaching, urge the continual employment of successful and efficient teachers, and prevent by all proper means, the employment of those who are incompetent and inefficient and seek to make the employment of all teachers a responsible public duty, for the public advantage only, and free from favor and sectarian interest.

Sec. 38. It shall be the duty of the county superintendent to hold district institutes during the school year, and he shall actively and earnestly promote the same. In holding said institutes he may group two or more districts in institute organization. Said districts shall be so arranged that the teachers in each district, or group of districts, shall have the benefit of such institutes at least twice during the school year. He may in his discretion close a part or all of the schools of his county, not to exceed two days in a school year, for the purpose of convening his teachers in convenient places for teachers' meetings or for institute purposes. Provided, that the teachers attending such meetings shall sustain no loss of pay.

Sec. 39. It shall be the duty of the county superintendent to encourage the formation of Teachers' Reading Circle in his county. He shall report on or before December fifteenth of each year, to the secretary of the State Teachers' Reading Circle the enrollment of all persons in his county known to him to be pursuing the work of said circle, plans by which the work thereof is being carried on, and all matters of general interest thereto. He shall, under the direction of the superintendent of public instruction, arrange for an annual examination in the State Teachers' Reading Circle course in his county and it shall be his duty to preside at the same or to appoint some competent person to do so; to collect all papers submitted and to forward the same promptly to the secretary of the board of managers. He shall cooperate as fully as possible with the board of managers of the State Teachers' Reading Circle in advancing the work of that organization.

Sec. 40. County Normal Institute] It shall be the duty of the county superintendent to hold annually a normal institute, between the first day of April and the fifteenth day of September, of not less than five days' duration, for the instruction of teachers and those who desire to teach, and he shall procure such assistance in addition to the conductor as he may deem necessary.

At the close of the normal institute the conductor thereof shall immediately certify to the county auditor the dates of opening and closing said institute and forward to him a certified copy of his commission. The county auditor shall immediately present such data to the county treasurer, who shall thereupon transfer from the county general fund to the county institute fund the equivalent of ten cents per capita upon the school census of the county for the current year, provided, that if the per capita amount so ascertained shall be less than \$150 in any county then at least the sum of one hundred fifty dollars shall be transferred by the board of county commissioners to the county institute fund.

Provided, that the county commissioners may make additional appropriation to the county institute fund when in their judgment it is necessary in order to provide an effective institute. All disburse-

ments of the institute fund shall be made upon warrant of the county auditor upon certified itemized bills, approved by the county superintendent for services rendered or expenses incurred in connection with the normal institute.

Sec. 41. Joint Institutes] The county superintendent may hold the county normal institute in his own county, or, he may hold the same in an adjoining county for the purpose of combining with such other county or counties if in his judgment it is to the best educational interests of his county.

When two or more county institutes are combined and held in one county all bills against the county institute fund shall be audited in the county where the institute is held, and all disbursements of the institute fund shall be made upon warrant of the county auditor upon itemized bills approved by a majority of the county superintendents holding such joint institute.

Counties holding joint institutes shall share the expense of such institute in such proportion as the number of children enumerated in the school census of each county bears to the total number of children enumerated in the counties so combined in the institute.

The county superintendents of the counties combined for institute purposes shall determine each county's share of the expense of the institute as above provided and shall send a certified statement of the same signed by a majority of the county superintendents to the auditor of each county so combined, whereupon the county auditor so notified shall issue a warrant on the institute fund in favor of the county treasurer of the county in which the institute was held for his county's share of said expense and the said county treasurer shall place it to the credit of the institute fund of his county.

Sec. 42. District Officers' Meetings] Each year the county superintendent shall require the district school officers of his county to assemble at one or more convenient locations for discussing questions intended to promote the school interests of the county. In his discretion he may close all the schools of his county and require the attendance of the teachers at such meetings; provided, that he shall give the interested persons ten days' notice and shall also notify the state superintendent of public instruction of such meeting.

Provided further, that school officers shall receive a per diem of one dollar and fifty cents and five cents per mile each way for every mile necessarily traveled in attending the same, which shall be paid from the district treasury. If the teachers are required to attend they shall sustain no loss of pay. (Session Laws 1909.)

Sec. 43. Examination of Officers' Accounts] It shall be the duty of the county superintendent at least once each year to notify the various district school officers of the time and place he will meet with

them, and personally or through his deputy, to determine the accuracy of the school officers' records and to advise them as to the proper form of keeping such accounts and it shall be the duty of said officers to bring or send said records of their respective offices to the superintendent or his deputy at the place and time specified in said notice. Should any such officer fail to make his report according to law and at the time required, the county superintendent is authorized to procure the same by examination of the records, files and accounts of such officer for the purpose of obtaining such information. It shall be the duty of the county superintendent to file with the chairman of the district board a certified statement of the condition of the records, accounts and funds of the treasurer and clerk as shown by said examination.

Sec. 44. Medium of Communication] The county superintendent shall at all times conform to the instructions of the superintendent of public instruction as to matters within the jurisdiction of the latter. He shall serve as a medium of communication between the superintendent of public instruction and the district officers.

Sec. 45. Power to Administer Oaths] The county superintendent shall have power to administer oaths of office to all subordinate school officers in his county and to certify to the same; and district clerks and chairmen are hereby empowered to administer oaths in all matters to which their respective districts may be a party.

Sec. 46. Power to Close School] The county superintendent shall have power to close any school under his supervision on account of contagious disease, or for any other good and sufficient cause known to him.

Sec. 47. Census Enumeration Report] On or before the first day of July in each year, each county superintendent shall report under oath to the commissioner of school and public lands the enumeration of persons of school age in each school district in his county according to the census of the school districts as hereinafter provided. And this enumeration shall also be used by the county superintendent as a basis for apportioning the county general school fund.

Sec. 48. Apportionment of School Money] The county treasurer shall on or before the fifth day of January and July furnish the county superintendent with a statement of all moneys in the county treasury belonging to the county general school fund, and shall pay the same, upon the order of the superintendent to the treasurers of the respective public school corporations of the county. The county treasurer shall also pay at such times as are required by law, to the treasurer of each school corporation, all of the school money collected for such corporation, and shall take duplicate receipts for the money paid. He shall send one of the receipts to the clerk of the said school corporation.

Sec. 49. The county superintendent shall on the tenth day of January and July in each year apportion the money in the county treasury belonging to the county general school fund to the several school corporations within the county in proportion to the number of children of school age residing therein. He shall also draw orders on the county treasurer in favor of the several school treasurers of the county for the amount apportioned to them, and shall take their receipts therefor.

Sec. 50. County General School Fund] The county general school fund to be thus apportioned shall consist of the money received from the income of the permanent school fund of the state as apportioned to the several counties by the commissioner of school and public lands, and the money derived from the tax levy of one dollar on each elector in the county, and also the fines as provided for in section 39 of Chapter 35 of Penal Code.

Sec. 51. Annual Report to State Superintendent] The county superintendent shall on or before the first Monday of September of each year, make a report to the superintendent of public instruction containing a full abstract of the reports made to him by the district officers and such other matters as he shall be directed to report by the said superintendent, and as he himself may deem essential in exhibiting the true condition of the schools under his charge. Should he fail to make such report he shall forfeit to the school fund of his county the sum of one hundred dollars, and shall besides be liable for all damages caused by such neglect.

Sec. 52. Failure of District Officer to Report] If any district officer fails or neglects to transmit or deliver to the county superintendent the annual report of his district at the time required by law it shall become the duty of the county superintendent to visit said district officer at his residence in said district and obtain such report. Upon sworn statement of such visit being filed with the county auditor the county commissioners shall order the sum of five dollars to be transferred from the general fund of said district to the county general fund and a county warrant for that amount shall be issued to the county superintendent.

Sec. 53. Superintendent to Give Advice]. The county superintendent of schools shall when requested give advice relative to school matters to any school officer or person within the county; but such advice shall be advisory only.

Sec. 54. Teacher's Certificate] The state superintendent of public instruction shall be authorized to issue teachers' certificates of the following grades: A first grade certificate valid for not to exceed three years, a second grade certificate valid for not to exceed two years, a third grade certificate valid for not to exceed one year, and a

primary teachers' certificate for not to exceed five years. The requirements for all these certificates shall include both scholastic and professional ability. A complete certificate shall certify the scholastic and professional requirements, skill in teaching and moral character. Written answers for the scholastic examination hereinafter provided for shall be read and marked under the direction of the state superintendent of public instruction, and the markings for the professional requirements shall be given by the county superintendent who shall also be the judge of skill in teaching and moral character of the applicant. Provided, that a diploma from any state normal school or any approved school of South Dakota, having a normal department approved for normal training by the state superintendent, having a course of study in which at least two years' work beyond the first two years in an approved four year high school course is required and which shall include professional instruction and practice teaching equal to one class hour daily for two years may be accepted by the state superintendent in lieu of an examination for a first grade certificate.

Provided, further, that a diploma from any state normal school or any approved school of South Dakota, having a normal department approved by the state superintendent for such normal training, having a course of study in which at least two years' work beyond the approved eighth grade course of the public schools of South Dakota is required and which shall include professional instruction and practice teaching equal to one hour a week for two years may be accepted by the state superintendent in lieu of an examination for a second grade certificate.

Provided, further, that the course of study pursued by every applicant for a certificate under the provisions of this section shall include all those branches of study required in the examination for first and second grade certificates respectively.

The provisions of this act shall not affect the rights of persons holding certificates, provisional certificates or diploma at the date of the passage of this law or who may acquire certificates, provisional certificates or diplomas before this law becomes effective, but such persons shall be entitled to receive from the state superintendent certificates of the grade and standing which would be awarded were this law not enacted. (Chapter 136 Session Laws 1911.)

Sec. 55. First Grade Certificates] A complete first grade certificate certifying to scholastic requirements by the state superintendent and to professional requirements, skill in teaching and moral character by the county superintendent in whose county the examination is held, shall be valid in any county of the state, in all grades below the high school. Applicants for certificates of this grade shall pass an examination in orthography, reading, writing, arithmetic, geography, physical geography, English grammar, physiology and

hygiene, with special reference to the effects of alcoholic drinks and narcotics upon the human system, history of the United States, civil government, current events, American literature, South Dakota history, drawing and didactics.

Sec. 56. Second Grade Certificates] A complete second grade certificate for both scholastic and professional requirements, signed by the state superintendent and the county superintendent, as indicated above for first grade certificate shall be valid in all grades below the high school in the county in which the examination is held, and may similarly be made valid in any county by the endorsement of the county superintendent of said county. Applicants for certificates of this grade shall pass examination in orthography, reading, writing, arithmetic, physiology and hygiene with special reference to the effect of alcoholic drinks and narcotics upon the human system, geography, English grammar, history of the United States, civil government, South Dakota history, diactics and drawing.

Sec. 57. Third Grade Certificates] A third grade certificate valid in grades below the high school only in the county where issued and in such district as the county superintendent shall designate upon its face, and signed by the state superintendent and county superintendent, may be issued in the discretion of the state superintendent to those candidates who have failed in their examination to measure up to the requirements of the department for the second grade certificate. No teacher shall be entitled to receive more than two third grade certificates.

Sec. 58. Primary Certificates] A primary teacher's certificate shall authorize the holder thereof to teach in the kindergarten and first and second grades only in cities and towns, and shall be issued on examination in the following branches: Reading, writing, orthography, arithmetic, physiology and hygiene with special reference to the effects of alcoholic drinks and narcotics upon the human system, geography, English grammar, history of the United States, South Dakota history, drawing, didactics, and in questions in kindergarten and primary methods. The primary teacher's certificate shall be valid in the county where issued and may be valid in other counties by the endorsement of the county superintendent.

Sec. 59. Regulations for Holding Examinations] The regulations for holding the examinations by the county superintendent in each county and the required standards upon which the various certificates shall be issued shall be prescribed by the state superintendent of public instruction.

Provided, that no person shall be entitled to a certificate of any grade who has not attained to the age of eighteen years and who does not present evidence of good moral character.

Provided, further, that applicants for first, second, or third grade

certificates, and for primary teachers' certificates, shall pay a fee of one dollar. All such fees shall be collected by the county superintendent and deposited with the county treasurer one-half to the credit of the institute fund and one-half to the credit of the general fund of the state, to be turned into the state treasury, and it shall be placed to the credit of the same fund as fees for state certificates and life diplomas.

Sec. 60. Time of Examinations] The time for regular examinations shall be uniform throughout the state and the examination shall be conducted by the county superintendent in each county, or by persons appointed by him, strictly according to regulations prescribed by the department of public instruction.

An affidavit may be required of such an examiner, certifying that the regulations regarding such examinations have been fully observed. Such public notice shall be given of the time and place and regulations governing the examination, as the superintendent of public instruction may determine. The local expense for the examinations herein provided for in each county shall be paid by the county in which said examinations are held. The necessary expenses incurred by the superintendent of public instruction in carrying out the provisions of this act shall be paid from the appropriation made for the maintenance of the department of education.

Sec. 61. Teachers to Draw Pay] The regular examinations shall be public and the teachers desiring to take the same may dismiss their school for that purpose for a period not exceeding two days in each year, without loss of pay.

Sec. 62. Special Certificates] Any county superintendent may, on his own examination, issue a certificate of the first, second or third grade to applicants who present satisfactory proof that they were unable to be present at the public regular examination. Such certificate shall be termed a special certificate and shall be valid only in grades below the high school in a district specified on its face and until the next succeeding public regular examination.

The special certificates must be issued only upon a special examination held as per the requirements which the applicant has passed. Special certificates cannot be issued upon an expired certificate or upon high school or other school diplomas. Opinion by S. W. Clark, Attorney General.

Sec. 63. Prohibition on Teaching] No person shall be allowed to teach in any of the public schools of this state nor draw wages as a public school teacher who is not the holder of a valid teachers' certificate issued pursuant to the provisions of this and the preceding articles.

Provided, that in cities and other independent districts persons exclusively engaged in teaching music, drawing, penmanship, book-keeping, foreign language, or kindergarten method shall not be required to hold a county certificate.

Sec. 64. Revocation of Certificates] The county superintendent

is hereby authorized and required to revoke at any time first, second or third grade certificates and primary teachers' certificates for any cause which would have prevented the issue of the same, for incompetency, immorality, intemperance, violation of the state law, cruelty, general neglect of the business of the school and for refusal and neglect to attend regularly a county institute and at least one district institute each year, after due notice, provided that holders of first or higher certificates, in force, who have attended regularly at least four normal institutes may be excused by the county or state superintendent, in his discretion, from attendance at county institutes for such current year.

Sec. 65. The county superintendent within ten days after his decision to revoke a certificate, shall transmit a written statement to the person accused stating the ground upon which said certificate was revoked and a copy of the statement shall be forwarded to the state superintendent of public instruction. The aggrieved person desiring to appeal from said decision within ten days after receipt of such notice, shall serve a written notice of appeal from said decision on the state superintendent of public instruction, which notice shall specify the grounds upon which the appeal is taken. The state superintendent shall provide for a fair review in the case of an appeal from the decision of the county superintendent.

The moment the aggrieved person has served notice of appeal on the state superintendent the case is in his hands, and he must provide for a fair review. This may be by submitting written testimony or in the giving of oral testimony in person, by both sides. Opinion by Philo Hall, Attorney General.

The teacher's certificate revoked by a superintendent continues in that condition until the same is reversed by the state superintendent. Opinion by Philo Hall, Attorney General.

ARTICLE III

Sec. 66. School Corporations] Any school district containing one or more schools, except those governed by the provision of Article XI relating to cities, towns and adjacent territory organized as independent districts, are for the purposes of this chapter defined to be school districts.

Sec. 66 1/2. Each common school district in this state may choose a name and record the same in a book to be kept for the purpose in the office of the county superintendent of schools, of the county wherein such district is located; provided that such county superintendent shall refuse to record as the name of any district, a name which has been previously chosen and recorded by another district in the same county. The respective school districts are hereby empowered to contract in and sue and be sued by the name so chosen and recorded. (Chapter 142 Session Laws 1911,)

Sec. 67. In all counties organized for school purposes under the district system, each school district shall be and remain a school district corporation until changed as herein provided. Each township in every county in this state which consists of territory not organized into a civil township shall be and remain a school district corporation until changed as herein provided.

Provided further, nothing in this article shall be construed to alter the boundary lines of any school district or of any school township organized prior to the passage of this chapter, except as hereinafter provided.

Sec. 68. In any county now, or hereafter organized, the county commissioners shall divide the county or the settled portions thereof into school districts. In the formation of such districts and the formation of their boundaries as provided for in this section, boundary lines of congressional townships shall be made the boundary lines of the districts;

Provided, that the commissioners may, at their discretion, when for the best interests of the schools, organize one or more congressional townships into one school district;

A school district may be so formed as to include all or a portion of an Indian reservation, but of course such land cannot be assessed until it has been opened to settlement. Opinion by S. W. Clark, Attorney General.

Provided further, that no district shall be thus formed in which there are not at the time of its formation at least ten children of legal school age.

Sec. 69. Division of District] In any county school districts may be divided as follows: Upon receipt of a petition signed by at least one-third of the qualified electors of any district, it shall be the duty of the district clerk to post a notice on the door of each school house in said district, calling an election for the purpose of dividing said district into new districts.

Provided, that said petition and posted notices shall contain a plat of the proposed division, and a copy of said plat shall be posted by the district clerk at the polling place on the day of election.

The purpose of a notice of a proposed change in the boundaries of school districts is to give the school districts to be affected an opportunity to be heard, and the manner in which such notice is given is immaterial where it appears that such notice was given so as to enable the district to be affected to prepare for and protest against the action of the special board. School District No. 56 v. School District No. 27, 9 S. D. 336.

Provided further, that said petition shall be filed with the district clerk at least twenty days prior to said election, and said notices shall be posted at least ten days before said election specifying the time and place thereof.

The election shall be held on the second Tuesday of March, at a convenient place designated by the school board at a regular or special meeting thereof;

The provisions appertaining to the election of district school officers shall apply to this election as near as applicable. If a majority

of the votes cast at this election are in favor of division, and said petition and poll book of said election are on file with the county auditor, the board of county commissioners and the county superintendent shall, at the next regular meeting of the board of county commissioners in April following such election, divide the said district in accordance with the return of said petition and election. Any district which comprises two or more civil townships may be divided in accordance with said petition and election.

At the regular meeting of the board of county commissioners in July following said election, the board of county commissioners and the county superintendent shall make an equitable apportionment of the property and indebtedness (other than bonded) of the district among the new districts formed therefrom;

The apportionment of the property and indebtedness may be made at a subsequent meeting of the county commissioners and county superintendent, but in case considerable time has elapsed it would be proper to give due notice to interested parties. Opinion by Philo Hall, Attorney General.

The school districts affected must, without special notice, take notice that the county commissioners and the county superintendent of schools will, at the July meeting following a change of boundaries in the school districts, or at the adjourned meeting, make an apportionment of the property. School District No. 56 v. School District No. 27, 9 S. D. 336.

Provided, that should there be any bonded indebtedness outstanding against the district, the county commissioners shall levy a tax annually on the property of the new districts formed therefrom sufficient to pay the interest and principal of the bonds as the same become due. The county treasurer shall apply such tax to the payment of said bonded indebtedness, and when the bonds are paid and cancelled the county treasurer shall place the unused balance, if there be any of such tax, to the credit of the districts formed therefrom.

The taking by one school district of part of the territory embraced in another district, at the time the latter issued a bond for the erection of a school building, does not render the former liable either to the latter or to a creditor thereof for any part of such bond in an action at law, in the absence of express legislation imposing a liability upon it, especially where the school building remained in the old district. Livingston v. School District No. 7, 9 S. D. 102.

Sec. 70. Formation of Township Districts] Upon the receipt of a petition signed by a majority of the qualified electors of any civil township in said county having districts smaller than civil townships, the county commissioners and the county superintendent of schools shall declare that the school districts shall comprise a school township district, and the county superintendent shall appoint the necessary officers as hereinafter provided in section 90, who shall hold until the next election.

Sec. 70½. Creating of School Township Districts] Whenever two-thirds of the qualified electors of any congressional township in this state which is now a part of some school district comprising more than one such congressional township shall petition the board of county commissioners of their county to create a separate school district comprised of their congressional township and have filed such

petition with the county auditor, it shall be the duty of said board of county commissioners, together with the county superintendent of schools of said county, at the first regular or special meeting of said board of county commissioners, to declare said congressional township a separate school district, and the county superintendent shall appoint the necessary officers as provided in Section 90, Article 5, Chapter 135, Session Laws of 1907, who shall hold office until the election.

Provided, that no such district shall be formed, if by forming such school township district any territory heretofore belonging to such former district shall be left without reasonable school privileges, or in such shape as to render it impracticable for district purposes. Any property interests of the district affected by the provisions of this act shall be adjusted in accordance with the provisions of Section 69, of Chapter 135, of the Session Laws of 1907. (Chapter 242, Session Laws 1909.)

Sec. 71. Election of New Officers] In each new district formed by division as provided for in section 69, the officers thereof shall be chosen at the annual school meeting following. The clerk of each original school district shall, on or before the first Tuesday in July following the division as provided in section 69, forward to the county auditor a certified statement of the finances of the district, including the bonded and other indebtedness. The treasurer of each original district shall also within the same time turn over to the county treasurer all money belonging to said district, and such money shall be apportioned to the districts succeeding as provided in the preceding sections.

Sec. 72. Name of School Corporation] Every school district which consists of a civil township shall be named the..... School District of.....County State of South Dakota, with the name of the civil township inserted in the blank before the word school, and the name of the county in which it is situated inserted before the word county. Every school district consisting of territory not organized into civil township, but which has been named by a distinctive name shall have such distinctive name inserted in the blank before the word school. Every school district consisting of territory not organized into a civil township and which has no distinctive name shall be called District No.....of.....county with its proper number inserted in the blank after the word No., and the proper name of the county inserted.

Sec. 73. Change of Boundaries] After the boundary lines of the several school districts in the county are established, such boundaries at any regular meeting may be changed by the board of county commissioners and the county superintendent of schools upon a petition for such change signed by ten legal voters residing in the districts to be affected by the change; due notice having been given by

the county auditor to the school boards of the districts to be affected by such proposed change, if in the judgment of the commissioners and the superintendent such change is for the best interest of the patrons of the schools.

The petition authorizing the change of boundaries of school districts within a county upon a petition "signed by ten legal voters residing in the district or districts affected," need not necessarily be signed by ten legal voters residing in each of the districts affected. School District No. 74 v. Lincoln County, 9 S. D. 291.

New districts may be created from existing districts within a single county, as well as the mere change of boundaries of the existing districts, by the board of county commissioners and the county superintendent of schools upon a petition signed by ten legal voters residing in the "district or districts" to be affected by the proposed change. School District No. 74 v. Lincoln County, 9 S. D. 291.

A school district cannot escape liabilities to pay a new district the amount apportioned by the special board to such new district, on the technical ground that a proper form of notice of the proposed change of boundaries was not given to the former district, where the officers of the board and voters of such district have been heard and their protest or remonstrance, containing a recital that the clerk of the board was given notice was considered. School District No. 56 v. School District No. 27, 9 S. D. 336.

Provided, that when petition is made for the formation of a district from parts of two or more counties, the commissioners of the said counties may in their discretion appoint a joint commission to establish the boundaries of the proposed district and to adjust all the accounts relating thereto. The said joint commission shall appoint the necessary officers in said district. It shall be the duty of the county superintendent of the county in which the school house of said district is located to fill all vacancies that may occur thereafter, to license the teacher for said school and to have supervision of the same. Whenever district boundaries shall be changed under the provisions of this article, it shall be the duty of the county commissioners and the county superintendent to make an apportionment of property and indebtedness as hereinafter provided.

The county superintendent of any county in this state shall have power and it shall be his duty, whenever petitioned so to do by any land owner whose place of residence on such land in any school district in such county, or whose dwelling house thereon is more than three miles from the location of the school house in such district, to make an order attaching such land, not to exceed one hundred and sixty acres, to any adjoining school district, the school house in which is located within three miles or less of said residence or dwelling house, and thereafter said land shall be a part of the district to which it is so attached.

Sec. 74. School District a Corporation] Every school district established under the provisions of this article or heretofore established, shall be and is hereby constituted a district corporation for school purposes, and under its own proper name and number of such corporation may sue and be sued, contract and be contracted with, purchase, hold and use personal and real property for the purpose mentioned in this article and sell and dispose of the same.

Sec. 75. Judgment] Whenever any final judgment shall be obtained against any school corporation, the board thereof shall levy a tax upon the taxable property in the corporation for the payment thereof, and such tax shall be collected as other school taxes, but no execution shall issue against a school corporation. Such tax or taxes shall not be greater than two per cent in any one year, and any surplus fund in the treasury of the school corporation may be appropriated to the payment of a judgment. If the school board refuse or fail to levy such tax, the judgment creditor may apply to the board of county commissioners, who shall cause such tax to be levied upon the property of the school district. When collected it shall be paid over by the county treasurer to the judgment creditor, whose receipt therefor shall be delivered the same as money to the treasurer of the school corporation by the county treasurer. Such levy may be repeated until the judgment is paid.

Sec. 76. Courts of Jurisdiction] Justices of the peace shall have jurisdiction in all cases in which a school corporation is a party interested, when the amount that is claimed does not exceed one hundred dollars, and the party shall have the right to appeal as in other cases.

Sec. 77. Fines—How Collected] All fines and penalties not otherwise provided for in this chapter shall be collected by action in any court of competent jurisdiction.

Sec. 78. Plat of County] The county superintendent shall within thirty days after the first school election held as provided herein transmit to the superintendent of public instruction, a plat of the county showing the boundaries and name of each school district therein. He shall also record a copy of the same, together with all the proceedings of the county board done under this article in a proper book kept for that purpose. He shall promptly furnish such officer with a correct plat, showing any changes at any time in the boundaries of school corporations. The superintendent of public instruction shall furnish directions for the suitable preparation and construction of such plats, in regard to the scale of marking, etc., in order to secure uniform series of maps for binding for office use.

Sec. 78½. To Permit Public Meetings in School Houses] (1) That the public school houses in the state of South Dakota, outside of cities and towns may hereafter be used for public meetings, including singing, literary societies, political and other meetings of moral purposes; provided, such use shall be entirely without expense to the school district having control of such school house for heat and light and care of same; and provided further, that any person or persons or public body so using any such school house shall be responsible to such school district for any and all damage that may be caused to such school house or any fixture or furniture therein by reason of such use or occupancy as aforesaid.

(2) If any person residing within the district wishes to secure the school house for any meeting or meetings, such as are enumerated above, and makes application to the chairman of the school board or other school officer having custody of the school house in said district, it shall be the duty of said chairman or school officer having custody to grant permission for such meeting or meetings; provided, such meeting or meetings shall in no way interfere with the school that may be in session at the time. Provided, further, such chairman or other school officer having custody of such school house may refuse such applicant if the school house has been previously engaged for any similar meeting covering the same period of time.

ARTICLE IV

District School Board

Sec. 79. Election] The school district annual election shall be held upon the third Tuesday of June in each year.

Sec. 80. Personnel of the Board] The district school board of each school district shall consist of a chairman, a clerk and a treasurer who shall be elected at the time of the school district annual election, each for a term of three years, as follows:

A chairman in 1907 and every three years thereafter.

A clerk in 1908 and every three years thereafter.

A treasurer in 1909 and every three years thereafter.

In the filling of vacancies or the election of officers for a new district, they should be elected so that throughout the state the chairman of the school boards would be elected on the same year, the clerks the succeeding year and the treasurers on the next succeeding year, in rotation. That makes it uniform, and the title of the laws says that it is to establish a uniform system. Opinion by J. L. Pyle, Attorney General.

Provided, that school officers duly elected and qualified at the time of the passage of this act shall continue to serve as officers till the expiration of their respective terms of office.

Sec. 81. Annual Election] Not less than ten days before the election required under the provisions of this article, the district clerk shall post notices in three public places in the district. Said notices shall specify the time and place of holding the election, and the hours during which the polls shall be kept open.

The chairman and clerk of the district board shall serve as judge and clerk of the election. If they are not present at the time of opening the poll, voters present may select a judge and clerk from their number. The polls shall be open at 2 p. m. and kept open two hours in the district having but one school, and four hours in districts having more than one school. All persons who are qualified electors under the constitution of the state shall be qualified to vote at any school district election. The voting must be by ballot, and the polls

and tally list supplied through the county superintendent, must be kept and returned to the district clerk, who shall upon receipt of the same issue the certificate of election to the persons receiving the greatest number of votes as shown by the certified returns;

Provided, that in case of a tie in the election of an officer, the contest shall be settled at once by lot by the board of election.

Provided, that at the annual school district election the electors shall have authority to instruct the board in matters pertaining to the management of the schools for the coming year. They shall be called to order for this purpose at three o'clock p. m. or as soon thereafter as practicable. The chairman of the school district board shall act as chairman of the meeting and the clerk shall keep the minutes of the meeting in the permanent records of the school district. At this meeting the electors may instruct the board and it shall be their duty to carry into execution all such instructions, pertaining to the branches to be taught in addition to those prescribed in section 138; the time at which the schools of the district shall be held; the amount of tax levy, to direct the repair of the school houses, fixtures and out-buildings; and for the removal of the school house to a more convenient location, for the erection of a new one, or the sale of an old one, and the lands belonging thereto; and upon any other subject pertaining to the schools. At this meeting it shall be the duty of the clerk and treasurer to give approximately the facts that will be contained in their respective reports. And it shall be the duty of the district board to carry into execution all such instructions upon a majority vote of the electors of their district.

The acts of a school board or the committee of the board in the erection of a school house are legal and binding so long as they act honestly and for the good of the district and keep within the specified limits of the bond. *Edinburg L. & M. Co. v. Mitchell*, 1 S. D. 593.

It is not within the power of a township school board, or any number of citizens of a sub-district, to remove a school house located within such district, except upon a majority vote of the electors of such sub-district. *Graves v. Jasper School District*, 2 S. D. 414.

A school board cannot be compelled by mandamus proceedings to carry out the expressed wishes of the patrons of the district in any matter relating to the district, purchase of sites, etc., since such compliance is made discretionary with the board. *Heinz v. Moulton*, 7 S. D. 272.

The removal of school houses is not authorized except by a majority vote of the electors. *Graves v. Jasper School District*, 2 S. D. 414.

Provided, that it shall be the duty of the district board to furnish, equip and supply all the schools in the district according to the several necessities of said schools, and with as nearly equal school advantages as possible.

Provided, further, that nothing contained herein shall prevent the district board from exercising a sound discretion as to all matters pertaining to the duties of their office not specially provided for by law.

Sec. 82. Qualification] Such officer and member elected under the provisions of this article shall qualify on or before the second Tuesday in July following his election, and shall hold his office for

the number of years for which he is elected and until his successor is elected and qualified.

Sec. 83. If any person appointed or elected to a school district office shall for one month after the time fixed by law fail to qualify or give bond as provided by law, or whenever any school district shall for any reason fail to elect any person to succeed the school officer whose term shall have expired, the office shall be deemed vacant and the county superintendent, shall when notified of such vacancy, proceed to fill the same by appointment and such appointee shall hold the office until the next general school election, when a successor shall be elected to fill the unexpired term of said office. (Chapter 138 Session Laws 1911.)

Sec. 84. Oath] All school district officers before entering upon the duties of their respective offices shall take an oath to support the constitution of the United States and of the state of South Dakota, and faithfully and impartially to perform the duties of such office.

Sec. 85. Bond Void] The school treasurer shall on or before the second Tuesday in July following his election, and before entering upon his duties give a bond to the school district, conditioned that he will honestly and faithfully discharge his duties as treasurer; that he will render a true account of all funds and property that shall come into his hands, and pay and deliver the same according to law; said bond shall become void when said treasurer has completed his term and all his acts shall have been approved by the school board and a majority of the electors at any regular or regularly called special meeting.

Provided, that a bona fide deposit of school funds in the name of the school district in any bank or depository selected by a majority of the school electors of any school district shall relieve the school treasurer from the liability for loss of said deposited funds while on deposit therein. Such bond shall be in such penal sum as may be fixed by clerk and chairman of the board, but not less than double the sum, as nearly as can be ascertained to come into his hands in any one year shall be signed by two or more sufficient sureties and shall be approved by the clerk and chairman of the board, provided that in all cases where the bond required of the treasurer shall be greater than one thousand dollars the treasurer elect may secure a surety bond, subject to the approval of the clerk and chairman of the board the same as of other bonds and the cost of said bond shall be paid by the district. In case the chairman and clerk refuse or neglect to approve the bond of the district treasurer and the sureties thereto such treasurer may present the same to the county superintendent and serve notice thereof upon said chairman and clerk; and upon the due proof of such notice being made to the county superintendent, he shall, unless good cause for delay appear, proceed to hear and determine the

sufficiency of the bond and sureties thereto, and may approve the same, and such approval shall be in all respects valid.

Whenever a treasurer of a school district by election or appointment becomes his own successor he shall give new bonds, and all such officers shall qualify anew upon entering a new term.

Sec. 86. Bond of Clerk] The clerk of the school board shall, on or before the second Tuesday in July following his election, and before entering upon his duties, give a bond to the school district conditioned that he will honestly and faithfully discharge his duties as clerk, that he will render a true account of all property that shall come into his hands as such clerk and deliver the same according to law. Such bonds shall be in the penal sum of one hundred dollars, shall be signed by two or more sufficient sureties, and shall be approved by the chairman and treasurer. In case of neglect or refusal to approve such bond, it shall be approved in such manner as provided in the preceding section for the approval of the bond of the treasurer.

Sec. 87. No officer of the school district shall perform any duties of the office nor receive any of the property, money, books or papers belonging to the office, nor any money from the county treasurer or warrant, until he has fully qualified as required by law.

Sec. 88. New or Additional Bond] The county superintendent may at any time require a new or additional bonds for the district officers whenever it may be deemed necessary by him, or upon the failure, death or removal from the county of any one of the sureties. All such bonds shall be filed with the county auditor, and in case of the breach of any conditions thereof, the county superintendent shall cause an action to be commenced and prosecuted thereon in the corporate name of the school district, and all moneys so collected shall be paid into the county treasury to be applied to the use of the schools of said district. If the county superintendent either fail or refuse to bring such action upon the breach of the bond, then any taxpayer of the district may cause such action to be commenced, and the necessary expenses of such action shall be paid, unless otherwise ordered by the court, out of the county treasury from the funds apportioned to such district.

Sec. 89. Bonds and Oaths Filed] All official bonds of school district officers shall be filed with the county auditor and he shall give the county superintendent immediate notice of the same. The oaths and reports of school district officers shall be filed with the county superintendent.

Sec. 90. Temporary School Officers] Whenever a school-district shall be formed, the county superintendent of schools shall appoint temporary officers for such school district, who shall serve until the first annual school election following and until their successors are elected and qualified.

Sec. 91. Vacancies] Whenever a vacancy may occur, from any cause, in any school district office under the supervision of the county superintendent, he shall fill such vacancy by appointment, and such officer shall hold office until the next election, when the vacancy shall be filled by a vote of the people.

A school officer must be a bona fide resident of the district, for the moment he moves his family out of the district a vacancy exists. Opinion by J. L. Pyle, Attorney General.

By "next election" is meant the next regular election at which this particular office would be open for election. The superintendent would therefore fill the vacancy for the entire unexpired term and not necessarily until the next annual election. Opinion by Philo Hall, Attorney General.

The failure to hold an election for an office does not create vacancy in such office, but the present incumbent continues to serve till a successor is elected. Opinion by S. W. Clark, Attorney General.

Incapacity of Officer] If from sickness or any other cause such officer shall become incapacitated or unable to attend to the duties of his office, the fact shall be certified to the county superintendent by the clerk of the school district. If the clerk fails to notify the county superintendent of any vacancy that may exist, it shall be the duty of the remaining officer or officers to do so, and a successor shall be appointed to fill such vacancy, and such appointment shall be held official until the next regular election.

Sec. 92. Meetings of Board] District boards shall hold three regular meetings each year for the transaction of business to-wit: On the second Tuesday in July, the last Tuesday in November and March at such place and hour as may be fixed by the school board.

Provided, that the district clerk shall when requested by a majority of the board, call a special meeting at any time by giving written notice to each member of the board.

Sec. 93. Special Meetings of Voters] Provided, that in any school district five legal voters may petition the clerk to call a special meeting of the voters at any time, and it shall be the duty of the clerk to call such meeting by posting such notices at least ten days prior to the time of the meeting in three of the most conspicuous places in the district. Such notices shall give the date, hour, and object of the meeting.

Sec. 94. Chairman—Duties of] The chairman shall preside at all meetings of the board. In his absence the chairman pro tempore shall preside. The chairman shall perform such other duties as are prescribed by this article.

Sec. 95. Clerk—Duties of] The clerk of the board shall keep an accurate record of all proceedings of the board, give or post all notices, make out all reports and statements, shall take census of the children of legal school age in his district as hereinafter provided, and perform all other duties required by law or by order of the board.

Sec. 96. Clerk—Annual Report] The clerk of each district shall, on or before the first day of August of each year, make, sign, transmit, or deliver to the county superintendent, an annual report in writing covering the preceding school year and including all the facts and statistics of the school district which are required to be included in the county superintendent's state report and in the same order therein required, except any item therein peculiar to the county and not belonging to the district. He shall also report the branches of study in the graded and ungraded schools separately, the names and addresses of the district school officers, and the dates when their terms severally expire, and all other facts and statistics, which the county superintendent may require for his report to the superintendent of public instruction.

Sec. 97. Clerk—All District Meetings] The district clerk shall be clerk of all district meetings, but if such clerk shall not be present or being present shall refuse to act at such district meeting, the voters present may appoint a clerk for such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

Sec. 98. Clerk—Draw and Sign Warrants] The clerk shall draw and sign all warrants for the payment of money for the purpose legally ordered by the board, and every such warrant shall be countersigned by the chairman of the board. No warrant shall be drawn by the clerk except upon the presentation of a bill for the service rendered, duly certified, and the same shall be retained by him as a voucher and placed on file in his office.

This section provides for the keeping of a regular system of accounts by the clerk. All warrants drawn should be on a duly certified bill. A warrant for teacher's salary should be paid on a duly certified claim the same as all other claims. Opinion by W. H. Roddle, Assistant Attorney General.

Sec. 99. School Census] It shall be the duty of the clerk of the school district board or clerk of the board of education or some person employed by him in each district in the state on or before the first Monday in June of each year to take the census of all children under twenty-one and over six years of age, residing in the district.

Persons under twenty-one years of age who are married should be included in the census. Opinion by Philo Hall, Attorney General.

In all cases where the clerk employs another person to take the school census, before entering upon the duty of taking the school census such person shall take and subscribe an oath to perform faithfully the duties of census enumerator of such school district to the best of his ability and that he will by a house to house visitation or by conference with a member of each family enter in the said census names of all children of legal school age, as herein defined, and none other, and said oath he shall file with the county superintendent of schools.

The census shall show the age of the child on May first, the name of the parent or guardian of each, and shall be filed with the county superintendent on or before the said first Monday in June. The clerk shall also place one copy of said census in the register of each school in the district. In taking the census the clerk, either by a house to house visitation or by conference with a member of each family shall determine positively the data regarding all children entitled to be enrolled on the census as herein defined. If any clerk or person employed by him shall wilfully enter and return in said census the names of any children not lawfully entitled to enrollment on account of either age or residence he shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding one hundred dollars. For the labor incurred in taking the census, the clerk or person employed by him shall be entitled to receive such remuneration as shall be fixed by the district board, which shall be paid from the district treasury. No clerk or person employed by him shall receive pay for the service of taking the census until said report shall have been approved by the county superintendent and the chairman of the district board notified by the county superintendent. Provided, that said remuneration so received shall not be counted as salary.

Sec. 100. Census, Compared by County Superintendent] It shall be the duty of the county superintendent of schools to receive such census from each school district clerk in his county, and to inspect carefully the same, and by comparison with the previous census of said district, and other means verify its accuracy and if on examination and comparison he find the said census to be inaccurate, insufficient or including names not properly enrolled in the school district, it shall be his duty to cause a new census of the said school district to be made, and the expense thereof shall be charged to and paid by the said district so making the insufficient, false or fraudulent return. In which case the first census enumerator shall be entitled to no remuneration.

Sec 101. Census Sent to Commissioner of School and Public Lands] On or before the first day of July in each year, each county superintendent shall report under oath to the commissioner of school and public lands the enumeration of persons of school age in each school district in his county, according to the census of school districts as hereinbefore provided. Upon receipt of such report of the enumeration of children residing in each school district in the state, it shall be the duty of the state commissioner of school and public lands to inspect carefully each report so received and, by comparison or otherwise, to satisfy himself of the accuracy thereof, and if upon such inspection, comparison, or by other means he shall become satisfied that the census of any school district as reported is insufficient, false, or fraudulent, it shall be his duty to provide for a re-enumeration of the said school district, and the expense of such re-enumeration.

tion shall be paid by the school district so re-enumerated. And upon the census of all of the school children secured, as hereinbefore provided, he shall apportion the school funds as provided by law.

Sec. 102. Treasurer—Duties of] The school treasurer shall keep such accounts and make such reports as are required of him by law. He shall pay no money out of the school funds in his hands except upon the warrant of the school board signed by the clerk and countersigned by the chairman. He shall pay all warrants properly drawn and signed when presented so long as there is any money in his hands or subject to his order for their payment, and shall draw all money in the hands of the county treasurer belonging to his district, at least once every three months in each year.

A treasurer of a school district properly refuses to pay a warrant issued to a teacher who was unlawfully appointed because she did not hold a lawful certificate. *Hardy v. Purington*, 6 S. D. 382.

The treasurer is not obliged to accept orders or warrants illegally drawn. *Hardy v. Purington*, 6 S. D. 382.

A county treasurer can hold the office of school treasurer. Opinion by J. L. Pyle, Attorney General.

Where the district authorizes the clerk to draw warrants the chairman must countersign the same. Should he refuse he can be compelled to do so by mandamus proceedings. Opinion by J. L. Pyle, Attorney General.

Sec. 103. Whenever a warrant is presented to the treasurer for payment, and there is no money in his hands or subject to his order for the payment of such warrant he shall endorse on such warrant, "Presented for payment this.....day of..... 19....and not paid for want of funds," and sign such endorsement. If he has in his hands or subject to his order money for the part payment of such warrant, he shall make such part payment and endorse the sum on the warrant and add "balance not paid for want of funds," signing the same. He shall keep a correct register of all warrants so presented and endorsed. Every warrant presented and endorsed shall draw interest for the amount unpaid at seven per cent per annum until paid.

Provided, that whenever there shall come into the hands of the treasurer, or subject to his order, money applicable to the payment of any warrant which has been so presented and registered, the treasurer shall notify in writing, by mail, the drawee of such warrant, at his last known place of residence, to present such warrant for payment, and interest shall cease upon every such warrant within ten days after such notice shall have been sent and such money shall be held for the payment of such warrant.

The treasurer of a school district is personally liable for misrepresentation as to warrants. *Whitbeck v. Sees*, 10 S. D. 417.

Sec. 104. Manner of Drawing Warrants] Every warrant drawn by the clerk of the district board on the district treasurer shall specify the purpose for which the money is paid, the fund on which it is drawn and the person, firm or corporation to whom paid;

Provided, that no warrant shall be issued except for indebtedness incurred prior to its issue.

Sec. 105. Salary of School Officers] The chairman shall receive an annual salary of five dollars, and such remuneration for attending such meeting of the school officers as provided for in section 42, and shall receive no other compensation for his services as a district officer.

The district clerk shall receive a salary of five dollars per annum for every school or department thereof in the district and in like manner the district treasurer shall receive five dollars per annum for every school or department thereof in this district.

In case a school is closed and pupils transported to another school the officers are not entitled to compensation on account of such school. Opinion by S. W. Clark, Attorney General.

Provided, that in computing the salary of such offices no school shall be included unless the same shall have been taught at least three months the preceding school year;

Provided, that such salary shall not exceed twenty-five dollars per annum for the treasurer. They shall each receive remuneration additional for attending such meetings of the school officers as provided for in section 42.

Provided, further, that the county superintendent shall, upon receipt of the annual report of the clerk and treasurer, if correct, complete, and received on or before August first of each year, notify the chairman of said school board that such reports have been received. Thereupon the chairman of the school board shall sign the warrant for their annual salary and no part of said salary shall be paid until said notice.

Sec. 106. Prohibition on School Officers] No school officer shall be employed to teach, nor to draw public money as a teacher in any district while holding office, except by permission of the county superintendent.

ARTICLE V

Sec. 107. Powers and Duties of the District School Board] The district school board shall have general charge, direction and management of the school or schools of the district, and the care, custody and control of all the property belonging to it, subject to the provisions of this article. They shall organize, maintain and conveniently locate schools for the education of all children of school age within the district. If a petition signed by the persons charged with the support and having the care and custody of seven or more children of school age all of whom reside not less than three miles from the nearest school, is presented to the board asking for the organization of a school for such children, the board shall organize such school and employ a teacher therefor, if a suitable room for such school can be leased or rented at some proper location not more than three miles distant from the residence of any one of such children.

Ordinarily it is not a good plan for school boards to go beyond the express terms of their authority as laid down in the statutes, because they have no power except that expressly conferred upon them by law, and they are likely to get into litigation on their own account by exceeding the limits of their authority. Opinion by Philo Hall, Attorney General.

The members of a school board are individually bound by a contract signed by a majority of the board in their individual names with the addition of their postoffice address, where the body recites and agreement "between the undersigned members of the board," and that "we, the undersigned, hereby order * * * * provided a majority of said board sign this agreement," adding "we agree to pay for the above named goods when delivered." *Western Pub. House v. Murdick*, 1 S. D. 297.

A board of education has power, independently of express legislation, to close the schools when there is imminent danger from smallpox until such danger subsides, or to suspend such pupils as refuse to be vaccinated. *Glover v. Lead Bd. of Edu.*, 14 S. D. 139.

Upon the face of a contract, and without considering the extraneous circumstances, the members of a school board are personally liable upon a contract for the purchase of books, which is signed by them in their individual names, without any separate designation as members of the board, notwithstanding that they are described as such in the body of the contract, and that there is a provision that the seller shall accept in payment an order or warrant issued on the treasurer of the school township. *Western Pub. House v. Bachman*, 2 S. D. 512.

It is the policy of the law to exonerate school officers as well as other public servants required to exercise judgment and discretion, from liabilities in damages occasioned by their official conduct, but they must act honestly, in good faith and within the powers conferred upon them. *Whitbeck v. Sees*, 10 S. D. 417.

No liability arises from an instrument purporting to bind school directors personally for the purchase price of goods in case of non-payment by the county treasurer within thirty days after delivery, when it appears that, though the instrument bears the signatures of a majority of the board, it was delivered to the plaintiff only on the express and unfilled condition that they should be bound only in the event that the signatures of all the board be obtained. *Manufacturers Furnishing Co. v. Kremer*, 7 S. D. 463.

A school board which issues an order to a contractor for the erection of a school house for the purpose of enabling him to raise money to perform his contract, and which assents to his transfer of the order for that purpose, cannot escape liability thereon because of the contractor's failure to complete the contract. *Meyer v. School District 31*, 4 S. D. 420.

A recovery may be had upon a quantum meruit by one who built a school house which the school district accepted, and has used continuously, where the bond issued by the district as evidence of its indebtedness was adjudged void as of a denomination in excess of the amount allowed by statute. *Livingston v. School District No. 7*, 11 S. D. 150.

Sec. 108 [Transportation] When pupils reside more than two and one-half miles from the nearest school house in the school district and not to exceed three miles, then the parent, guardian or pupil shall receive from his school district ten cents per day for each pupil, if more than three miles and not to exceed four miles, twenty-five cents per day. If four miles and not to exceed five miles, thirty-five cents per day. If five miles and not to exceed six miles, forty-five cents per day. Provided, that such financial provision shall be only for actual attendance at public school and conditioned that the district in no way furnish means of conveyance. Provided, that when pupils reside nearer some school in another school township or district than the school board or board of education can make arrangements for the schooling of such pupils at such other school by paying tuition and such transportation as previously provided for in this section. Provided, further, in determining the distance to be traveled to get to any school, the most direct route by section lines shall be the basis of the computation. This

act to apply only to schools operating under the township school system. (Chapter 141 Session Laws 1911.)

Sec. 109. The district school board shall make all necessary repairs to the school houses, out-buildings and appurtenances, and shall furnish fuel and all necessary supplies for the schools.

The word "repairs" does not include the enlargement or rebuilding of the school house, if that is necessary, a vote of the electors is essential. Opinion by Philo Hall, Attorney General.

Water Closets] They shall give special attention to the matter of convenient water closets or privies, and provide on every school house site, not within an independent city or town district, two separate buildings located at the farthest point from the main entrance to the school house, and as far from each other as may be, and keep them in wholesome condition and good repair. In independent city or town districts where it is inconvenient or undersirable to erect two separate out houses, several closets may be included under one roof, and if outside the school house each shall be separated from the other by a brick wall, double partition, or other solid or continuous barrier, extending from the roof to the bottom of the vault below, and the approaches to the outside doors for the two sexes shall be separated by a substantial close fence not less than seven feet high and thirty feet in length.

Sec. 110. The district school board shall employ the teachers for the schools of the district, and may dismiss any teacher at any time for plain violation of contract, gross immorality, or flagrant neglect of duty;

Provided, that every contract for the employment of a teacher shall be in writing, and authorized by a majority of the members of the district school board, and provided further, that in any school district consisting of one or more townships, in any school except in a city, town or village of more than fifty inhabitants, if a petition be presented to the clerk of said district or school board on or before the regular school meeting in July, signed by three-fourths of the parents or guardians of persons of school age belonging to any school in said district, such petition asking that a certain teacher be employed for the following school year, provided said teacher at the time of said meeting is the holder of a valid second or third grade certificate or certificate of higher grade, it shall be the duty of the school board so petitioned to employ said teacher provided said teacher is willing to teach said school at the wages paid other teachers in said district of like qualifications and holding like certificates.

If any member of a school board mentioned in this section shall refuse or fail to employ teacher as provided in this section, he shall be deemed guilty of a misdemeanor and upon conviction thereof, be fined in a sum not less than twenty nor more than fifty dollars. (Session Laws 1909.)

Sec. 111. Officers' Meetings] The district school officers shall attend meetings of school officers as provided for in section 42.

Sec. 112. Pupils from Other Districts] The district school board shall admit to the schools in the district pupils from other districts, when it can be done without injuring or overcrowding such schools, and make regulations for their admission and payment of their tuition therein. (See note section 1, Art. VIII—Const.)

It shall be the duty of the board at the annual July meeting each year, to make the assignment and distribution of pupils to and among the schools in the district, and in such assignment and distribution the board shall take into consideration the wishes of the patrons and the best interests of the pupils and the district.

Sec. 113. May Discontinue School] Any school in the district may be discontinued by the district school board, for the purpose of combining two or more schools into one and to make arrangements for the transportation of the pupils to said school or schools if, in the judgment of the board, it is to the best interests of the pupils and the district.

Sec. 114. Appeal Against Closing School] The patrons of any school may appeal to the county superintendent and remonstrate against any discontinuance of such school which shall be signed by at least one-third of the patrons belonging to said school. Such petition shall set forth the reasons for the continuance of said school, whereupon the county superintendent shall order a hearing thereon, giving out notice of the time and place of such hearing, to the patrons of the school and district board; and if, after such hearing, he shall deem it to the best interests of said school and district he may order the continuance of said school, which order shall be heeded by the district school board.

Sec. 115. Appeal—General] Any party dissatisfied with a decision of the district school board or board of education, relative to school matters, may appeal therefrom to the circuit court of the county at any time within thirty days after the rendering of such decision. Said appeal is taken by serving a notice of appeal upon the district school board or board of education, or any member thereof, and by filing such appeal and a bond for costs with the clerk of the school district or board of education. Said notice of appeal must state the decision appealed from, in a clear and concise manner. Said bond for costs shall be in the sum of one hundred dollars, with two or more sureties approved by the clerk of said circuit court, conditioned that appellant pay all costs therein that may be adjudged against him. When said notice of appeal and bond for costs is filed with the clerk of the school district or board of education as above, said school clerk shall, within five days thereafter transmit to the clerk of the circuit court a certified copy of his record of the decision appealed from, and all original papers filed in his office in said mat-

ter including the notice of appeal and bond for costs therein; and said clerk may be compelled by said circuit court, by an order entered upon motion to transmit such certified copies or original papers, and may be fined for neglect or refusal to transmit the same. For such transcript and return the said clerk shall receive the usual copying fees and mileage one way, same to be taxed as part of the cost of suit. And the clerk of the court shall receive and file said papers, and docket the same, in the same manner, and shall receive the same fees therefor as in appeals from justices' courts to circuit courts;

Provided, his costs need not be paid before hand. When any matter is so appealed and filed with the clerk of the circuit court, it shall be docketed in the name of the dissatisfied party as appellant against the school district, by its proper name, as appellee, and it shall be tried anew in the circuit court according to the regular procedure provided by law therein and shall in all respects be treated as a regular case or action in said circuit court, save as hereinafter for expressly provided. No notice of trial or note of issue need be served to have such matter placed upon the trial calendar, and same shall come on for trial in its regular order, except as provided below herein; and the same proceedings shall be had and all judgments or orders therein shall be valid and mandatory, as by law provided in any other regular case or action or proceeding in said circuit court;

Provided, that above parties may agree upon the statement of facts in any actual case or matter tried anew thereon before the court in chambers or in open court, after proper appeal and consent of parties. In all of the above the circuit court shall render judgment therein and may render final judgment or make such order and direction therein as the circumstances of the case may require and as the very right of the case may appear and enforce the same upon execution or by mandamus or attachment as for contempt.

Sec. 116. Appeal to Supreme Court] Appeals relative to school matters may be taken from the circuit to the supreme court of the state, and the same proceeding shall be had, and all judgments and orders therein shall be valid and mandatory as by law provided in any other case or action or appeal or proceeding in said supreme court.

Sec. 117. Assist Teacher] The district school board shall assist and cooperate with the teacher in the government and discipline of the schools, and may make proper rules and regulations therefor. They may suspend or expel from school any pupil insubordinate or habitually disobedient.

Provided, that such suspension shall not be for a shorter period than ten days nor beyond the end of the current term of school.

Sec. 118. Tax Levy] The district school board shall have power to levy upon the property of the district a tax for school purposes of

not exceeding twenty mills on the dollar in a year, which levy shall be made by resolution of the board at their regular July meeting in specific amounts.

The clerk shall immediately thereafter notify in writing the county auditor of the total amount of tax so levied.

Sec. 118½ The limit of the rate of taxation in each school district having its boundary an incorporated city shall be the same as is now provided by law for cities, towns and adjacent territory organized as independent districts. (Chapter 87, Session Laws 1909.)

Sec. 119. Removal of School House] The school board shall have power to direct the removal of a school house to a more convenient location, upon a vote of the majority of the electors of the entire district;

A majority vote only is necessary for the removal of a school house from one to another point, both points being within the geographical center of the district. Opinion by Philo Hall, Attorney General.

By "entire district" is meant all the territory included in the district, whether it is a district of a single school or several schools. Opinion by W. H. Roddle, Assistant Attorney General.

Provided, that in districts in which there shall be but one school house a two-thirds majority vote shall be necessary to remove such school house from the center of the district to any other point in the district, except such removal shall be to the center of the district, in which case a majority vote shall be sufficient for such removal.

Provided, further, that any point within one hundred and sixty rods of the geographical center of the district shall be deemed the center for the purposes of this section.

Sec. 120. Annual Meeting of Board] At the annual meeting of the school district board in July of each year, it shall be the duty of the clerk and the treasurer to read their respective annual reports and the board shall verify them as provided in section 126 of this act.

The board shall levy such tax as the patrons shall have directed at the annual election, but it shall not exceed for all purposes two per cent of the taxable property of the district.

If any school district fails to hold in any school year at least six months of school in any school house in said district providing no legal discontinuance be had, it shall be the duty of the county superintendent to notify the county treasurer of the amount of money due said district from the apportionment fund for the semiannual term ending June 30 of the preceding year, which amount shall remain to the credit of such district and no warrant be drawn therefor until said district shall have complied with the law, unless said district board made provisions for the instruction of the pupils for the required time in some other school. In case of failure in any district to levy tax sufficient to support a school for the number of months above named, the board of county commissioners shall levy a tax on the property of the district that shall be sufficient for the purpose.

Sec. 121. Purchase and Sale of School Property] The district school board shall purchase or lease such site for a school house as shall have been designated by the voters at a district meeting in the corporate name thereof, and shall move any school house in the district to any site designated by the voters at any regular or special district meeting, and shall build, hire or purchase such school house as the voters of the district in a district meeting shall have agreed upon, out of the funds provided for that purpose and make sale of any school house or property of the district, and if necessary, execute a conveyance of the same in the name of the district, when lawfully directed by the voters of such district at any regular or special meeting, and shall carry into effect all lawful orders of the district.

A school district board has no authority to acquire a site for, or erect a school house until a site has been selected by the legal voters of the district. *F. & F. Nat. Bank v. School District 53*, 6 Dak. 255.

Sec. 122. Acquiring School Site] It shall be lawful for any board or district officers to take and hold any land not exceeding two acres, situated upon a section line or upon a regularly laid out highway, legally chosen as a school house site by a lawful district meeting. If the owner of such land refuses or neglects to grant such site to the district or cannot be found, the superintendent of that county shall upon application proceed according to law to condemn and acquire title to the same in the name of said district.

Provided, that whenever a school house site shall have been selected by the properly constituted authority of school districts on common school or endowment lands of this state, not exceeding two acres in a square form and located on a section line or on a regularly established highway and at one corner of a legal subdivision and not within forty rods of any residence, without the consent of the owner thereof, and a plat of the lands so selected shall have been filed in the office of the commissioner of school and public lands, the board of school and public lands is hereby authorized to direct an appraisal of such site by the state board of appraisers, and the same shall be appraised in the manner provided by law for the appraisal of school and public lands. Such appraisal shall not be less than the minimum price fixed by the constitution for school and public lands.

Sec. 123. Upon the payment of the full amount of the appraised price of such site a conveyance shall be executed by the governor, attested by the commissioner of school and public lands, with his seal of office affixed; conditioned that should the same cease to be used for two successive years, for the purpose of maintaining a public school thereon, that the title shall revert to the owner of the legal subdivision of which said site forms a part.

Sec. 124. Assessor Shall Furnish List of Property to Clerk] Every township or county assessor shall on or before the first day of July in each year furnish to the clerk of each school corporation, the

real property of which he assesses, a certificate of the valuation of all real property and of all personal property and of the total of these subject to taxation within the corporation for the current year.

Sec. 125. Commissioners Levy Tax for General Fund] The county commissioners of each county shall levy a tax of one dollar on each elector in the county for the support of the common schools, and no property shall be exempt from the collection of such tax by distress or otherwise, which taxes, when so collected shall be distributed to the several school corporations in the county in proportion to the number of children resident in the territory of each over six and under twenty-one years of age.

Sec. 126. Treasurer's Settlement With Board] At the annual meeting of the school board on the second Tuesday of July in each year, the incoming district board shall make settlement with the district treasurer, who shall at that meeting make his annual report in triplicate, one copy to be preserved in the treasurer's office; and upon approval of the same by the district board, one approved copy to be filed with the district clerk; and one approved copy to be transmitted by said clerk to the county superintendent on or before the first day of August of each year. On making said settlement it shall be the duty of the district board to compare the certified bills allowed by the board with the orders issued, also to compare the orders paid by the district treasurer the preceding year with the clerk's record of orders issued; and also compare the record of the money received and orders paid by the said treasurer with his annual report, and if found correct the report shall be approved, the orders cancelled and filed with the district clerk. The board shall cause to be posted in three public places, or published in a newspaper of general circulation in the county, an itemized statement for the receipts and expenditures for the preceding school year.

Sec. 127. False Report—Penalty] Any clerk or treasurer of a school district who shall wilfully sign or transmit a false report to the county superintendent, or wilfully sign, issue or publish a false statement of facts purporting or appearing to be based upon books, accounts or records, or of the affairs, resources and credit of the school district, shall upon conviction be punished by a fine of not exceeding fifty dollars or by imprisonment in the county jail not exceeding fifteen days. Any clerk or treasurer of a school district who shall wilfully mutilate or destroy any of the books, accounts or records of his office, or who shall refuse to deliver to his successor in office all the books, accounts, records of his office upon demand of his successor for the same, shall be deemed guilty of a misdemeanor, and it shall be the duty of said successor to begin action immediately upon the official bond of such officer for recovery of such money or other property.

Sec. 128. Failure to Report] Any school district officer who is required by law to make a report to any other county or school district officer, and who shall wilfully neglect to make such report or fail to perform such official duties, shall forfeit and pay to the school funds of said county or district a penalty of not less than ten dollars or more than fifty dollars, to be recovered from such delinquent officer, or from him and his sureties in the official bond, in a civil action to be brought by the state's attorney in any court of record having jurisdiction.

Sec. 129. Notice of Tax Levy to County Auditor] It shall be the duty of the district clerk on or before the 20th day of July in each year, to notify the county auditor of the amount of tax voted at the last annual meeting or levied by the district school board, and of any and all other tax of which notice has not previously been given. The notice shall be substantially in the following form:

District Clerk's Office,
School District No.....
.....County, South Dakota,
.....19....

To the County Auditor of.....County, S. D.

Sir: You are hereby notified that at ameeting of
.....District No.....held on the.....day of
.....the following tax was voted for the coming school year:

For tuition fund dollars
For general fund dollars
For interest and sinking fund dollars

Total..... dollars
(Signed).....

District Clerk.

The rate per centum of all school taxes shall be calculated and fixed by the county auditor, who shall consolidate the amounts and extend the school tax in one column.

Sec. 130. Accounts—How Kept] All moneys apportioned by the county superintendent to the district or received from the district tax for tuition purposes shall constitute the tuition fund. All moneys received from other sources shall constitute the general fund. The treasurer shall keep one general account wherein he shall set down on the debit side all the money he shall receive as treasurer from all sources whatever, each item of entry showing plainly the source of the particular payment to him with the date thereof; and he shall set down upon the credit side all the money he shall pay out for all purposes whatever, every item thereof showing to whom and for what purpose each payment was made, with the date thereof. The debit

side shall always be balanced by the total of the credit side, with the funds on hand added thereto. At the beginning of every school year he shall open such account anew for that year, and the first item shall be an entry on the debt side of the balance on hand, if any, for the preceding year. He shall also keep a separate set of accounts of different classes of receipts and expenditures, showing severally the following:

Receipts

Amount received into the tuition fund from all sources.....
 Amount received into the general fund from all sources.....
 Amount received into the interest and sinking fund from all sources

Expenditures

Amount paid tuition
 Amount paid for school houses, sites and furniture
 Amount paid for incidental expenses
 Amount paid as interest on bonds
 Amount paid upon debts and liabilities not included in other items...

The several accounts shall be separately kept and not required to balance. The accounts for different classes of receipts shall be kept separately from the accounts of the different classes of expenditures; but every entry in each shall fully and clearly designate its source of purpose with the dates.

Sec. 131. Reports Subject to Approval of County Superintendent] All reports and records of district officers and proceedings of district meetings shall be subject to the approval of the county superintendent, and if any money belonging to any district shall be expended for supporting a school in which the English language shall not be taught exclusively, or if any such money be otherwise unlawfully expended, the county superintendent or any taxpayer of the district may in a civil action in the name of the district recover said money from the officer so expending it. (Chapter 143 Session Laws 1911.)

Sec. 132. Books and Reports Open to Inspection] All reports and all books, records, vouchers, contracts and papers of all kinds relating to the school houses, schools and school business in the district, in the office of the clerk or treasurer, shall be at all times open to the inspection of the chairman who shall advise and aid toward securing correct records and accounts, and legal reports, and they shall likewise be open to the inspection of the state and county superintendents, and any particular paper or record shall be exhibited at reasonable hours to the examination of any voter or taxpayer.

Sec. 133. Majority of Board Have Authority] Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it be

otherwise expressed in the section or law giving the authority, and when a decision or direction is made by the majority of such officers or persons, it is the duty of the one to whom its execution belongs by law, to execute the same in all respects as if he had favored the particular decision or direction, as if it were authorized unanimously.

Sec. 134. Cultivation and Protection of Trees and Shrubs Upon the School House Grounds] It is hereby made the duty of the officers of every school district in the state of South Dakota to plant trees and shrubs upon the grounds of each school house in their district and to encourage the school children to plant such trees and shrubs and to cultivate and protect the same.

Where stock is permitted to run at large, it is hereby made the duty of the school officers in every district in South Dakota to cause to be erected about the grounds of every school house in each district a substantial fence sufficient to protect the trees upon the school house grounds from destruction by live stock, and such fence shall be provided with convenient gates or stiles.

ARTICLE VI

Teachers and Schools

Sec. 135. School Year, Month and Day Defined] The school year shall begin July first and end June thirtieth. A school month shall consist of twenty days, a school week of five days, a school day of five and one-half hours exclusive of intermission.

Provided, that the time specified as a school day shall not apply to primary schools. Saturday shall not be counted as school days.

Sec. 136. Employment of Teachers] Teachers shall be employed only upon the exhibition of the teacher's certificate valid in the county where employed, and then only upon a written contract signed by the teacher and at least two members of the district school board, which shall specify the date at or about which the school shall begin, the length of time it shall continue, the wages per month and the time of payment thereof, and said contract shall be signed in duplicate, and one copy filed in the office of the clerk and the other retained by the teacher. The following conditions shall be understood as forming a part of every contract, whether expressed therein or not:

Employment of a teacher who does not hold a lawful certificate is forbidden and an attempted contract with such unqualified teacher is void. *Hardy v. Purington*, 6 S. D. 382.

In the absence of any stipulation in the contract to the contrary, no deduction can be made from the teacher's salary because of the destruction of a school building, but if she secures employment elsewhere during the life of the contract only the difference in salary earned can be collected. *Opinion by Philo Hall, Attorney General.*

(1) The teacher shall not hold school upon any of the following legal holidays: The thirtieth day of May, the fourth day of

July, the day appointed by the president of the United States for national thanksgiving, and the twenty-fifth day of December. But such days shall count as part of the term and the teacher shall be paid therefor, but such pay shall not be drawn for any Sunday.

(2) School shall be adjourned during the session of the county Normal Institute, when the teachers have been notified by the county superintendent.

(3) Teachers shall receive into their schools pupils transferred thereto by the order of the district board, or admitted by its authority.

(4) Teachers shall send the notices, keep proper entries in the register which shall show the grade in which each pupil belongs, the pupil's standing as shown by the examination, and such other information as will assist the succeeding teacher in the conduct and management of the school, and make the report required by law; and the county superintendent shall promptly furnish without cost to the teacher the blank forms for such reports; and the district board shall furnish for use the proper register prepared so that the required facts and statistics can be kept in an orderly manner.

(5) Teachers shall classify the work of their schools in accordance with the suggestions, grades and outlines as prescribed in the course of study recommended by a majority of the county superintendents of the state and the superintendent of public instruction, and shall hold examinations, and make reports as prescribed therein.

(6) The county superintendent shall divide his county into districts as may be convenient for the purpose of holding district teachers' institutes during the school year on Saturdays and all teachers employed in the schools of each institute district shall be required to attend the meetings in such district but not less than two nor more than four such meetings shall be held in each district during any school year, nor shall such meetings be held oftener than once in two months. The county superintendent shall organize the teachers of each institute district at or near the beginning of the school year by appointing a manager and a secretary from among the teachers of the district, who shall, in conjunction with the county superintendent, prepare the programs for the several meetings to be held, and it shall be the county superintendent's duty to give all the teachers of the district at least two weeks' notice of such meeting. Each meeting shall consist of one session of approximately three hours. The program shall be so arranged that all teachers of the district shall be given an active part as often as practicable. The work as outlined by the state teachers' reading circle board shall constitute one-third of the work, and the balance of the program shall also be for the general improvement of the teachers.

The manager and the county superintendent shall keep complete records of the work at such meeting which shall show the absence, tardiness and attendance of all teachers and the manner in which

each one performed the duty or duties assigned. Within five days after the holding of such district institute the county superintendent shall forward the clerk of the school board or the secretary of the board of education in the institute district a certificate of attendance, duly signed and sealed, which shall entitle the holder thereof to the sum of \$2.00 and five cents mileage each way for every mile necessarily traveled from the residence of the teacher in the district to the place of holding of the institute, but such attendance shall be in the institute district in which the school is located.

Provided, that if a teacher fails to attend the district institute, after due notice, or fails to perform the duty or duties assigned, the county superintendent shall certify that fact to the clerk of the school board or to the secretary of the board of education of the school district in which such teacher may be employed, who shall then cause to be deducted the sum of \$1.50 from the salary of such teacher, unless such absence shall be caused by illness or other reason as shall be approved by the county superintendent.

Provided further, that whenever a teacher of a school or the majority of the teachers of a graded school desire to attend a state or district state association the school board or the board of education is hereby authorized to close such school or schools for not more than five days to enable such teacher or teachers to do so; provided, that the teacher or teachers must make up any time so lost from their engagement, unless the school board or board of education pass a resolution to other effect.

No provisions can be incorporated in teachers' contracts that are repugnant to the powers and authority vested in the school board by statute or which would enable it to arbitrarily terminate a contract, but that any reasonable provision may be incorporated in the contract if agreed to by both parties, which is not inconsistent with the provisions of such contracts required by statute or foreign to the usual and customary duties of a teacher although such provisions may be in addition to those required by statute. Opinion by Philo Hall, Attorney General.

It has been held that the school board acting in good faith with the district, can make a contract for the services of a teacher where the term commences during the life of the board hiring such teacher, but where the term laps over into the official year of their successor, but cannot make a contract for the teaching of a term which begins during the term of their successor. Opinion by J. L. Pyle, Attorney General.

In case a school is closed on account of sickness among the pupils, at the very beginning or during the term the board is liable for the teacher's salary. Opinion by S. W. Clark, Attorney General.

In order to enable a school board to make a valid contract with a teacher, a teacher must be the holder of a valid certificate at the time of signing the contract and in order to continue such contract in force, said teacher must continue to be the holder of a valid certificate during the life of such contract. Opinion by W. H. Roddle, Assistant Attorney General.

Sec. 137. Teachers to Give Notice on Beginning School]

Every teacher on commencing a term of school shall give written notice to the county superintendent of the time and place, of beginning of such school, and the probable time when it will end.

Sec. 138. Branches to be Taught] Instruction shall be given in the common schools of the state in the following branches in the several grades in which each may be required, viz: Reading, writing, orthography, arithmetic, geography, primary language and English grammar, history of the United States, history of South Dakota, physiology and hygiene, with special instruction as to the nature of alcoholic drinks and narcotics and their effects upon the human system, civil government, drawing and music. (Session Laws 1909.)

Sec. 139. Board Shall Provide Register] The board of every school district shall provide one classification school register for each school therein, which shall conform to the form prescribed in the book of forms provided in section 5, of article 1, and keep the same as part of the records of his office, except, during each term of school, when the teacher shall keep said register and record therein, each day the attendance of each pupil and the absence of those enrolled, and all other items necessary for making the report in the next section required.

Sec. 140. Teacher Shall Make Term Report]. Every teacher of a common school under this law shall at the expiration of each term immediately make out full duplicate reports and deliver one copy thereof to the school clerk, and one to the county superintendent. Such report shall show the names, ages and sex of all pupils admitted during the term, the branches taught, the studies pursued by each pupil, the text-books used, the number of days taught, the number of days each pupil was present the average daily attendance, the date when school began and ended, the salary per month, and information concerning the school and property. In addition to the above his report shall show the grade in which each pupil belongs; his standings as shown by the monthly and term examinations, the daily program of class recitations, and such other information as may be required by the county superintendent. The teacher shall also make monthly reports to parents and to county superintendents when blanks for the same are furnished. And until such report shall have been filed with the clerk, the school board shall not pay more than ninety per cent of the wages, of such teacher for his or her services as such, for the time required to be covered by such report.

The school board has a right to retain ten per cent of each month's salary of the teacher until such teacher has filed the report for the term at its close. Opinion by Philo Hall, Attorney General.

Provided, that any teacher who wilfully neglects to give notice and make reports herein provided or who shall refuse to fulfill the conditions of his contract unless such neglect or refusal be on account of sickness shall thereby forfeit her certificate to teach.

Sec. 141. Disturbance of a Public School] Every person whether pupil or not, who shall wilfully molest or disturb a public school when in session, or who shall wilfully interfere with or inter-

rupt the proper order or management of a public school by acts of violence, boisterous conduct or threatening language, so as to prevent the teacher or any pupil from performing his duty shall be guilty of a misdemeanor and shall upon conviction thereof, before a justice of the peace, be punished by a fine not exceeding twenty-five dollars or by imprisonment in the county jail not more than ten days, or by both such fine and imprisonment.

Sec. 142. Defacement of School Property] Any pupil who cuts, defaces, or otherwise injures any school house, apparatus, or outbuildings thereof, is liable to suspension or expulsion; and on the complaint of the teacher to any member of the school board, the parents or guardians of such pupils shall be liable for all damages.

Sec. 143. Ethical Instruction] Moral instruction intended to impress upon the mind of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism and respect for honest labor, obedience to parents and due deference for old age, shall be given by every teacher in the public service of the state.

Sec. 144. Humane Treatment of Animals to be Taught] There shall be in the public schools of this state, in addition to other branches of study as now prescribed, a system of humane treatment to animals.

Each school supported wholly or in part by the public funds of this state, in any county or city thereof, shall instruct all scholars in the laws of this state as embodied in the penal code, or other laws pertaining to the humane treatment of animals, such studies on the subject as the board of education having supervision thereof may adopt, such instruction to consist of not less than one lesson of ten minutes each during each week of the school year. But no experiment upon live animals, to demonstrate facts in physiology, shall be permitted in any school in this state.

Sec. 145. Necessary Equipment] Each school and each school room, containing one or more of the grades, three to eight inclusive, and each ungraded district school shall be supplied with a dictionary of some standard grade of a kind and edition approved by the county superintendent of schools, and a globe of some standard grade, a well mounted and recent set of wall maps, black boards, and other suitable apparatus for efficient teaching; within thirty days after the request in writing for the same has been made by the teacher. And the district school board may also provide for each school other high grade library books and books of reference as they may deem for the best interest of the school; Provided, said expense for books and other equipment as enumerated above shall not exceed fifty dollars for any school in any one year. Provided, that no district school board shall buy any apparatus, chart, or similar device unless said board is expressly authorized so to do by a majority of the school electors of such school district at a regular or regularly called special meeting thereof. (Chapter 145 Session Laws 1911.)

Sec. 146. Prohibition on Binding Contracts] No contract binding on the school district shall be made in any case except by the school board or board of education, acting as such, at a regular meeting, or regularly called special meeting, excepting contracts made for the employment of teachers.

A school warrant or order which is a contract is void unless authorized to be issued at a regular or properly called special meeting of the board. *Rockford v. School District No. 6, 103 N. W. 763.*

Sec. 147. Tuition for Eighth Grade Graduates] Any pupil who shall successfully complete the work of the eighth grade as established in the state course of study and who shall hold a common school diploma granted by the county superintendent is privileged to continue his school work up to and including the twelfth grade by attending any graded school (high school or normal school), in the state furnishing a higher course of study, and not to exceed two dollars per month of the tuition charge therefor shall be paid by the board of his home district from the general fund thereof, if his home district does not provide instruction in such higher grades, and any tuition charge in excess of said two dollars (\$2.00) per month, which, in addition thereto shall not exceed the actual per capita cost per month of schooling a student in such graded school, shall be paid by the student or his parent or guardian. (Chapter 137 Session Laws 1911.)

"Home district" here means the district in which a child may have his legal residence. Opinion by S. W. Clark, Attorney General.

A pupil who holds a diploma of graduation according to the above provision cannot compel the home district to pay tuition in a college. Opinion by W. H. Roddle, Assistant Attorney General.

A graduate of the 8th grade who is more than twenty-one years of age cannot compel the home district to pay his tuition to continue the work in the high school. Opinion by S. W. Clark, Attorney General.

ARTICLE VII

Sec. 148. Every person having under his control a child between the ages of eight and fourteen years, both inclusive, shall annually cause such child to regularly attend some public or private day school for the entire term during which the public school in the district in which he resides is in session. Provided, that the district board may decrease the required term of attendance to not less than sixteen weeks, twelve weeks of which must be consecutive.

For every neglect of such duty the person offending shall be fined for the use of the public schools of his school corporation, a sum of not less than \$10.00 nor more than \$20.00 and shall stand committed until such fine and costs of suit are paid.

A child is fourteen until he has reached the age of fifteen years. Decision by Granville G. Bennett, Judge of Lawrence County court.

A bad condition of roads, stormy weather, or the need of the services of a child at home is not a sufficient excuse for keeping a child out of school. Decision by Judge Dimock, Hutchinson County court.

But if the person so neglecting shall show to the board of education or district school board, as the case may be, or to the court, that instruction has otherwise been given by a competent person for a like

period of time to such child in the branches commonly taught in the public schools; that such child has already acquired the branches of learning taught in the public schools; or that his physical or mental condition as declared by a competent physician is such as to render such attendance unsafe or impracticable; or, if in the opinion of the court or judge such compulsory attendance would impose conditions which would not be humane, then such penalty shall not be incurred. Such fine shall be paid, when collected, to the county treasurer or the treasurer of such city or independent district in which such child and parents reside, to be credited by him as other money raised for school purposes to the district from which it came.

Sec. 149 The board of education of city or town independent school districts shall appoint each year a truant officer, whose duty it shall be, under the direction of said board or its superintendent, to enforce the provisions of this act. Provided that the county superintendent shall act ex-officio as truant officer for all other districts. The truant officer shall receive such compensation for his services as the board of education may determine.

It shall be the duty of the truant officer, teacher, member or agent of such board of education to petition, and any reputable citizen may petition the county court of the county, to inquire into the case of any child of compulsory school age who is not attending school, or whose attendance is irregular, or who has been guilty of habitual truancy, and the petition shall also state the names, if known of the father or mother of such child or the survivor of them, and if neither father nor mother of such child is living or cannot be found in the county or if their names cannot be ascertained, then the name of the legal guardian, and if there be neither, then the person who, in the judgment of the court, is responsible for the conduct of such child. Such petition shall be verified by oath upon the belief of the petitioner, and upon being filed, the judge of the county court shall cause to be issued a citation to the sheriff of the county directing him to bring such parent, guardian or person before the court or judge and shall summon such witnesses as may be necessary to ascertain the facts in the case, and if the court or judge shall find that the material facts set forth in the petition are true, then such parent, guardian or person shall be fined as hereinbefore provided. It shall also be the duty of said truant officer to arrest children of school going age who habitually haunt public places and have no lawful occupation, and also truant children who absent themselves from school without leave, and place them in charge of the teacher having charge of the school which said children are by law entitled to attend.

The board of education shall have the power, in its discretion, to set aside a room or building for the detention, during reasonable hours, and instruction of such children as may be assigned thereto

by the superintendent, principal or board of education because of habitual truancy, continued violation of the rules of the school, or of vicious or immoral habits, and to pass and enforce such rules and to provide teachers and other agents and equipment as may be necessary to maintain discipline and instruct in the same branches as are provided in other rooms or buildings. And it shall be the duty of said teacher to assign such children to their proper classes and instruct them in such studies as they are fitted to pursue. Any school officer or employe failing to perform the duty required of him by this article shall be liable to a fine of not less than \$10.00 nor more than \$20.00 for every such offense.

Sec. 150. No child under the age of fifteen years shall be employed, permitted or suffered to work at any gainful occupation in any mine, hotel, laundry, manufacturing establishment, factory, passenger or freight elevator, bowling alley, or in any saloon, theatre, concert hall or place of amusement where intoxicating liquors are sold, or as messenger or driver thereof, or in any other manner in work performed for wages or other compensation, to whomsoever payable, during any portion of any month during the hours when the public schools of any district in which he or she resides are in session.

Every owner, superintendent or overseer of any mine, factory, work-shop, mercantile establishment, or any other person who shall employ any child under fifteen years of age contrary to the provisions of this article shall be deemed guilty of a misdemeanor, and for every offense shall upon conviction thereof be fined not less than \$10.00 nor more than \$50.00 and costs.

Any person having the control of a child or who may have children in his employ, who with the intent to evade the provisions of this article shall make a wilfully false statement concerning the age of such child or in regard to facts covered by any other provision of this article, shall for such an offense be fined in any sum not less than \$10.00 nor more than \$50.00 for the use of the public school corporation.

ARTICLE VIII

School Bonds

Sec. 151. Bonds May Be Issued] Whenever the qualified electors of a school district shall at any regular or special meeting held for that purpose, vote to issue school district bonds for the purpose of building and furnishing a school house and purchasing grounds on which to locate the same, or to fund an outstanding indebtedness, the school district board may lawfully issue such bonds in accordance with the provisions of this article.

When a petition signed by a sufficient number is presented to the school board, the board must act. Opinion by S. W. Clark, Attorney General.

Provided, however, that the question of issuing bonds shall not be submitted to a vote of the district and no meeting shall be called for that purpose until the school district board shall have been petitioned in writing by one-third of the voters resident in said school district.

Sec. 152. Before the question of issuing bonds shall be submitted to a vote of the school district, notices shall be posted in at least three public and conspicuous places in said district stating the time and place of meeting, the amount of bonds proposed to be issued and the time in which they shall be made payable; said notices shall be posted not less than twenty days before the meeting, and the voting shall be done by means of written or printed ballots and all ballots deposited in favor of issuing the bonds shall have thereon the words "For issuing bonds," and those opposed thereto shall have thereon the words, "Against issuing bonds;" and if a majority of all the votes cast shall be in favor of issuing bonds the school board through its proper officers shall forthwith proceed to issue bonds in accordance with the vote; but if a majority of all the votes cast are against issuing bonds, then no further action can be had, and the question shall not be again submitted to a vote for one year thereafter, except for a different amount.

Sec. 153. Denomination of Bonds] The denomination of bonds which may be issued under the provisions of this article shall be fifty dollars or some multiple of fifty not exceeding two hundred dollars, and shall bear interest at the rate of not exceeding seven per cent per annum, payable semi-annually in accordance with interest coupons which shall be attached to said bonds; and such bonds shall be made payable in annual, biennial or triennial succession, but no bond shall be made payable in less than three or more than fifteen years; and no greater amount than two thousand five hundred dollars can be issued for any one school house, except in towns or villages of more than one hundred inhabitants, and in such districts the amount shall not exceed four per cent of the assessed valuation of said district.

Provided, that when a district containing two or more schools, at a meeting of the electors thereof, shall have voted to consolidate part or all of such schools, or if two or more districts shall have voted to consolidate for the purpose of establishing and maintaining a graded central school, in such cases bonds may be issued not to exceed four thousand dollars for the purpose of building and equipping a school house. Provided, that the amount shall not exceed four per cent of the assessed valuation of said district.

Provided further, that for the purpose of this act the valuation fixed by the state board of equalization at its last preceding meeting shall be the assessed valuation of such districts. (Session Laws 1909.)

Sec. 154. Bonds—Form of—Auditor's Certificate] Whenever any bonds are issued under the provisions of this article, they shall be lithographed or printed on good bond paper and shall state upon their face the date of their issue, the amount of the bond, to whom and for what purpose issued, also the time and place of making, and the rate of interest to be paid. They shall have printed upon the margin the words, "Authorized by article 8 of chapter.....of the Session Laws of South Dakota for 1907," and upon the back of the bonds a certificate signed by the county auditor in substantially the following form:

"I certify that the within bond is issued in accordance with law, and is within the debt limits permitted by the constitution of the state of South Dakota, and in accordance with a vote of school district at a regular (or special) meeting on the..... day of.....A. D. 19.....to issue bonds to the amount of.....dollars."

They shall be signed by the chairman and clerk of the school board and shall be registered and numbered in a book to be kept by the clerk for that purpose, in which shall be entered the number, date, and name of person to whom issued, and the dates when the same shall become due.

All bonds must be issued in denominations authorized by law or same are invalid. *Livingston v. School District No. 7, 9. S. D. 345.*
Statutory limitations does not apply to refunding bonds. *Ewart v. Mallery, 16 S. D. 151.*

Bond Tax Levy] In any school district where there are bonds outstanding, the school board shall have the power at the time the school taxes are levied, to levy a tax in addition to the tax provided for in section 118 sufficient to pay the interest on said outstanding bonds as the same may become due and not to exceed fifteen per cent of the principal as a sinking fund. The said tax shall be certified to the county auditor by the school clerk at the same time that the levies for other purposes are certified.

The money obtained from the levies for the interest and sinking fund shall not be used for any other purpose than that for which the levies are made;

Provided, that when any school district shall hereafter issue bonds, the school district board shall at or before the time of so doing provide for a levy of an annual tax sufficient to pay the interest and principal thereof when due, and all such levies when legally made shall be irrevocable until such debt be paid.

Provided, however, that such levy shall not be greater than fifteen per cent in any one year of the debt to be paid. The school board may in their discretion purchase any of its outstanding bonds at their market value and pay for the same out of the sinking fund.

Sec. 155. Sale of Bonds] Whenever any bonds shall be issued under the provisions of this article, the school district treasurer shall

have authority to negotiate and sell such bonds for not less than par, and the proceeds shall be used exclusively for the purpose of building and furnishing a school house and in payment for a site for the same and for necessary buildings.

A purchase in good faith, of bonds issued by boards of education is not deprived of the right to rely on the recital therein as to the purpose for which they were issued. *Pierre Bd. of Edu. v. McLean*, 45 C. C. A. 658.

A municipality is estopped, as against the bona fide purchaser of its bonds, to assert the falsity of a certificate upon the face thereof that all conditions precedent to their issuance have been performed in regular and due form as required by law. *Nat. L. Ins. Co. v. Huron Bd. of Edu.*, 12 S. D. 535.

Sec. 156. Bonds A Lien on Property] Bonds issued under the provisions of this article shall be a lien upon the taxable property of the school district issuing them, and when any school board neglects or refuses to levy a tax in accordance with law to meet any outstanding bonds or interest thereon, the county auditor shall have power to levy such tax, and when collected to apply the proceeds to the payment of such coupons and bonds.

Sec. 157. Cancellation of Bonds] Whenever the bonds of any school district shall have been redeemed by the school board, they shall be cancelled by writing or printing in red ink the word, "Cancelled and paid," across each bond and coupon, and the date of the payment and the amount paid shall be entered in the clerk's register against the proper number of bond and the bonds so cancelled shall be filed in the office of the district treasurer until all the outstanding bonds are paid, when they shall be destroyed in the presence of the full board.

Sec. 158. Building a School House] Whenever any school house is built with bonds provided in the manner herein authorized, the school board shall advertise at least thirty days in some newspaper printed in the county, or by posting notices for the same length of time in at least three of the most public and conspicuous places, if no newspaper is published in the county, for sealed proposals for building and furnishing such school house in accordance with plans and specifications that shall be furnished by the school board, reserving the right to reject any and all bids, and if any of the proposals shall be reasonable and satisfactory said board shall award the contract to the lowest responsible bidder, and shall require of such contractor a bond in double the amount of the contract, conditioned that he will properly account for all money and property of the school district that may come into his hands, and that he will perform the conditions of his contract in a faithful maner and in accordance with its provisions, and in case all the proposals shall be rejected said board shall advertise anew in the same manner as before until a reasonable bid shall be submitted;

Provided, however, that no member of the school district board, clerk or treasurer, shall be interested, directly or indirectly in any con-

tract for building or furnishing any school house provided for in this article.

159. Bonds Executed Now in Excess of Statute] When any school district in this state, which shall have heretofore legally issued, executed and delivered its negotiable bonds for the purpose then provided by law, and which at the time of issue thereof was not in excess of the debt limit allowed said district or township by law but which said district for any reason has outstanding in said bonds and other indebtedness an amount in excess of the present constitutional and statutory limit, so as to preclude a valid issue of bonds funding all outstanding indebtedness, then, and in that event the school board of said district upon being authorized to do so by a majority vote of all electors at any regular election or special election called for that purpose, is hereby empowered to make a contract for the issue of extension coupons with the holder or holders of said outstanding bonds, at or prior to the time of the same becoming due, which said contract shall be entered upon the clerk's record of said district, and in pursuance of said contract the said school board shall execute and deliver the extension coupons of said district, extending the time of payment of said school bonds heretofore issued for a period of not less than three nor more than ten years, at a rate of interest to be agreed upon between said school district board and the holder or holders of said bonds, not to exceed the rate in the original bonds, payable semi-annually at such date and place as may be stated in said coupons.

Sec. 160. Certificate of County Auditor] When any school district in this state shall have voted to issue its negotiable bonds for the purpose now provided by law, and before the county auditor shall certify to the bonds, as required in section 154 the said district shall file with said auditor certified copies of the record of the said school district, ordering said election, and the records and poll book of said election, and unless said records show a strict compliance with law, the said certificates shall not be executed..

ARTICLE IX

Sec. 161. Bonds by Boards of Education of Independent School Districts in all Cities of the First Class and Cities Under Commission Having a Population of 10,000 or Over] Boards of education of independent school districts in all cities of the first class and in all "cities under commission" having a population of 10,000 or over by the last preceding federal or state census are hereby authorized and empowered to issue negotiable bonds in the manner hereinafter provided for the following purposes: 1. To refund bonds that may now be outstanding. 2. To fund outstanding warrants. 3. To raise money for the purchase of sites and the erection of suitable buildings

for school purposes. 4. To raise money for the erection of additions to school buildings, (Chapter 139 Session Laws 1911. Emergency, Effective February 7, 1911.)

Sec. 162. Resolution of Board] When the board of education of the independent school district of any city of either of the classes referred to in Section 161 hereof, shall deem it necessary and expedient to raise money for any of the purposes herein provided for, it shall pass a resolution setting forth clearly and distinctly the object or objects, for which the bonds are to be issued, the amount of the bonds, the maximum rate of interest which they are to draw and the time when they shall become due and payable. Said resolution shall further fix the time and place for holding an election and shall distinctly specify the propositions to be submitted to the electors. Such resolution may include the issuing of bonds for one or more purposes. The resolution shall provide for its publication in two or more newspapers published in said city and that said publication shall be at least once a week for four weeks prior to the time of such election. When such resolution shall be adopted by the board, it shall be entered at length by the clerk on the minutes, signed by the president and attested by the clerk. (Chapter 139 Session Laws 1911. Emergency, Effective February 7th, 1911.)

Sec 163. Polling Place] The board shall fix a polling place in each ward and shall appoint by resolution the members of said board from the respective wards as judges of election. Such judges shall appoint a competent person as clerk.

Sec. 164. Election] Said election shall be held in accordance with the general election laws of this state, except as herein modified; Provided, no registration of electors shall be necessary. The polls shall be opened at 2 p. m. and close at 6 p. m. on the day designated. All persons, male and female, who are qualified electors under the laws of the state shall be competent to vote at such election.

Sec. 165. Ballot—Form of] The ballot to be used shall be white paper and shall be printed by authority of the board, and have printed upon it the propositions submitted to said electors. Said proposition or propositions so printed on the ballot, shall be, as near as possible, in the following form:

1. Shall the board of education of the city of (giving the name of city) be authorized to issue bonds in the sum of (naming it) payable in twenty years or less from date, at a rate of interest not to exceed five per cent per annum, payable annually, for the purpose of refunding the outstanding bonded indebtedness of such school corporation?

2. Shall the board of education of the said city (naming it) be authorized to issue bonds in the sum of (naming it) payable in twenty

years or less from date, and bearing rate of interest not to exceed five cent per annum, payable annually, for the purpose of funding the out-per cent, payable annually, for the purpose of purchasing suitable sites

3. Shall the board of education of the city (naming it) be authorized to issue bonds in the sum of (naming it) payable in twenty years or less from date, at the rate of interest not to exceed five per cent, payable annually, for the purposes of purchasing suitable sites and for the erection of suitable school buildings?

4. Shall the board of education of the city of (naming it) be authorized to issue bonds in the sum of (naming amount) payable in twenty years or less from date, bearing a rate of interest not to exceed five per cent, payable annually, for the purpose of erecting additions to school houses?

On the ballots there shall be printed opposite each separate proposition the words "yes" and "no" with squares before them. Any elector desiring to vote for one or more of said proposition shall place a cross in the square opposite the word "yes." Any elector desiring to vote against one or more of said propositions shall place a cross in the square opposite the word "no."

Sec. 166. Board Canvass Votes] After the close of the polls the respective election boards shall canvass the votes cast and certify the result to the board of education. The board of education shall meet within one week after such election and proceed to canvass the votes cast in the various wards, and the result of the canvass must be entered in the minutes of the board. At such election the proposition submitted must receive a majority of the votes cast. If one or more of said propositions receive such a majority the clerk must enter in his records the affidavits of publication of notice of the election.

Sec. 167. Rate of Interest and Signature of Officers on Bond] The bonds when issued shall not bear a higher rate of interest than five per cent, payable annually. They shall specify on their faces the purpose for which they are issued and the time of the election authorizing their issue; the time and place of payment which shall not exceed twenty years, and the statement that they are issued in accordance with the provisions of this article. The bonds shall be signed as follows: The board of education of the city of (naming it) by (giving his name), president of the board, and attested by the clerk, with the seal, and countersigned by the treasurer of said board. Each bond so issued shall not be less than fifty dollars. Such bonds when issued shall be held to be negotiable securities any may be issued payable to order or bearer. The annual interest shall be evidenced by coupons attached to the bonds. The coupons shall be signed and attested in the same manner as the bonds, but need not be countersigned by the treasurer.

Sec. 168. Sale of Bonds] Such bonds shall be sold at public auction to the highest bidder for not less than par. The board of education shall cause at least two weeks' notice to be published, stating the time and place where such bonds will be offered for sale.

Sec. 169. Bond Issue—Limit of Tax Levy to Pay] Any board of education of the independent school district of any city of either of the classes referred to in Section 161 hereof shall not issue bonds in such sum which, with the outstanding indebtedness, shall exceed five per cent of the assessed valuation of the taxable property situated in said school district, except when they are for funding or refunding purposes; but such funding or refunding bonds, with the debts not funded, shall not exceed the five per cent limit. Before any bonds are issued and sold in accordance with this article and with the vote of the electors of said corporation, the said board of education shall pass a resolution providing for the levy of an annual tax, which said levy shall include a sufficient sum to pay the annual interest on all bonds issued under this article and to create a sinking fund of at least three per cent per year of the principal of such bonds. The interest and sinking fund thus provided for shall be set apart by the treasurer of said corporation and shall not be used for other purposes. The sinking fund shall be applied to the payment of the bonds as fast as enough accumulates to pay one or more bonds, or for the purchase of such bonds at or below par; Provided, that such board may at its discretion pay not to exceed one year's interest in advance on any bond together with the principal, when it deems such course advisable, and in order to retire the bonds as fast as there is money in the sinking fund. (Chapter 139 Session Laws 1911. Emergency, effective February 7, 1911.)

Sec. 170. Interest Coupons—Payment of] Whenever the interest coupons on any bonds become due, they shall be promptly paid by the treasurer on presentation, and he shall stamp them "paid," with the date of payment, and his name. All bonds paid by him shall be cancelled in the same manner and filed with the clerk of the board.

Sec. 171. Property Pledged to Pay Bonds] The school property and fund of such school district are hereby pledged for the payment of any bonds issued under this article or under previous laws that may be superseded by this article.

Sec. 172. Bonds—Registered] It shall be the duty of the clerk and treasurer to register each bond issued in a suitable book, with the name of the purchaser and the names of subsequent holders when known. Such book shall contain columns for entering the payment of the coupons and bonds.

ARTICLE X

Sec. 173. Bonds for School Districts Created by Special Act]

Any independent school district heretofore created and organized under a special act is hereby authorized and empowered to issue bonds for the purpose of building, enlarging or furnishing school houses; or for purchasing grounds on which to locate the same, in any amount not exceeding five per centum of the assessed valuation of the property in the independent district, in such manner as is now provided for the issuance of bonds for like purposes under the provisions of the general school law;

The school corporation is a separate entity from city organization and city indebtedness cannot be taken into account in determining the limit of bonded indebtedness of the school corporation. *Wilson v. Huron Bd. of Edu.*, 12 S. D. 535. *Ins. Co. c. Mead*, 13 S. D. 46.

Provided, however, that in no case shall the outstanding indebtedness, together with the bonds so issued, exceed five per centum of the assessed valuation of the property in said independent district.

ARTICLE XI

Cities, Towns and Adjacent Territory, Organized as Independent Districts

Sec. 174. All cities towns and adjacent territory organized as independent school districts shall be governed by the provisions of this act.

Provided, that any city or town organized under special act, either for civil government or educational purposes, may at any time adopt the provisions of this act by a majority vote of the electors.

Provided further, that any city or town, or any unincorporated town or village, having a population of one hundred inhabitants or over, within a radius of one mile from the center, may adopt the provisions of this act. In such cases the county superintendent shall, upon petition of a majority of the legal voters within the proposed district, call the first election thereof by posting notices in not less than three of the most public places in the district or districts in which said city or town is situated, said notices shall contain a full description of the boundaries of the proposed district, and also the time and place of holding the election. If a majority of the voters of the district or districts in which the said city or town is situated, shall vote for the incorporation of the said city or town as a corporation for school purposes, then it shall be considered as authorized and the county superintendent shall, without delay, publish notices for an election of officers of said corporation. (Session Laws 1909.)

The boundaries of the school corporation thus formed must correspond to the boundaries of the civil corporation. Opinion by Philo Hall, Attorney General.

Any town or village containing a population of one hundred people

within a radius of one mile may adopt the provisions of this article, whether it is incorporated or not. Opinion by S. W. Clark, Attorney General.

Sec. 174½. In all cases where any city, town or village, now organized and existing under and by virtue of any special charter, may adopt the provisions of the general law relating to cities, towns or villages and reorganize under the same, such reorganization shall in no way limit or affect existing boundaries of any school district of which district such reorganized city, town or village may form a part, and shall in no way affect existing laws controlling or regulating such school district. [Chapter 62, Session Laws 1909.]

Sec. 175. Whenever a new corporation is authorized and established as provided in Section 174, the County Superintendent, the President of the Board of Education of the district thus organized, and the Chairman of the School District superseded by the organization of the new district, shall constitute a committee of arbitration for the purpose of adjusting all property interests, liabilities, bonds or other forms of indebtedness between the new corporation and the district or districts superseded by its formation.

The title to all real and personal property granted to the new corporation by the committee of arbitration shall be made over, transferred and conveyed to said corporation by the district or districts superseded and in which such property was previously vested, upon order of said committee. And all personal property granted to the said new corporation shall be delivered to the proper officer by those having it in charge, upon demand, accompanied by the order of the committee. And the new corporation shall be liable for and shall assume and pay according to their legal tenor, effect and obligation, all the outstanding debts, liabilities and bonds, and the accrued interest thereon, of the school district or districts superseded by the new corporation, and the same as if said debts, liabilities or bonds, had been incurred or issued by said new corporation, and the law which authorized the superseded district or districts to incur said liabilities and debts, or to issue said bonds, shall apply to the new corporation the same as if it had originally been authorized to incur or issue, and had incurred and issued said liabilities, debts or bonds. The debts, liabilities, and bonds shall be deemed in law to be those of the new corporation, with the same validity for securing and enforcing the payment of the principal and interest that they would have against the district or districts that incurred or issued them.

That the foregoing provisions shall apply with equal force where the school organization superseded and its officers were a part of the city government in which the schools were situated.

It shall be the duty of the County Superintendent to file with the County Auditor a correct plat showing the adjustment of district

boundaries in consequence of the formation and organization of the district as above provided.

§ 2. That the foregoing amendment shall apply with full force and effect to independent school districts which were organized prior to the passage of this act as if said amendment had been passed and was in force previous to their organization. All issues of bonds by school districts prior to the passage of this act, for the purpose of refunding bonds of the district or city superseded by the new corporation and all payments of liabilities and indebtedness of said district or city are hereby made legal to the same extent as though the foregoing amendment had been in force before any proceedings were had for the issue of said bonds or payment of said liabilities and debts. Where any election has been held or other steps have been taken or proceedings had preparatory to the issue of bonds for the purpose of refunding bonds of the district or city superseded by the new corporation, it shall be unnecessary to repeat such election or proceedings already had, but the new corporation may continue the proceedings with the same force and effect as though such election or proceedings were all had after this amendment goes into effect. (Chapter 134 Session Laws 1911. Emergency, effective March 2, 1911.)

Sec. 176. Attachment of Territory] Territory outside of the limits of any organized independent school district, but adjacent thereto, may be attached thereto, and territory within the limits of any independent district, organized for school purposes and adjacent to any school district may be attached to said school district, whether said independent district has been organized by special act or otherwise, under the following condition:

First. Application by written petition for such change must be made by a majority of resident electors desiring to have territory attached to or detached from any independent district.

Second. Upon receipt of such petition the county superintendent shall call a committee to decide upon granting or refusing the petition, said committee consisting of himself, the president of the board of education of said independent district and the chairman of the district board.

Third. The committee shall consider the interest of the two corporations concerned, the convenience of the petitioners and the permanent school interest, and if they deem it proper, shall grant the petition and issue an order authorizing the attaching of such territory to the independent district or school districts to which it is adjacent, and if to any adjacent district containing a city or town, such order shall specify to what ward or wards such territory shall belong for all school purposes;

Provided, that when territory has been attached prior hereto the board of education shall at any regular meeting determine to what ward or wards such territory shall belong for all school purposes.

Fourth. The committee shall also have power to adjust all property interests involved in the change which concerns the two corporations interested. Before the issuance of an order authorizing the change, they shall make an equitable adjustment of any question of indebtedness involved.

Fifth. A record of the decisions of the committee shall be transmitted to the clerks of the school board and board of education interested, for record, and a copy forwarded to the county auditor by the superintendent.

Sixth. Such territory shall, from the date of the order authorizing such change, be considered a part of the independent district, of said school district;

Provided, that such order shall not be issued until after the action and decisions of the committee are recorded by the board of education and the district school board.

The taxable property of all such adjacent territory shall be subject to taxation and bear its proportion of expenses incurred, in the erection of school buildings and maintaining the schools of such corporation;

Provided, that territory more than two miles from the limits of such city or town shall not be considered adjacent territory to which the provisions of this section may apply unless the electors of such territory shall unanimously petition to be thus attached and considered as adjacent territory;

The school board of an independent school district cannot be held to have had no jurisdiction to attach adjacent territory to the district for the purpose of education, on a petition of a majority of such territory from the mere fact that the extreme boundary is over two miles from the limits of the district. *Redfield School District No. 12 v. Redfield Ind. District No. 20*, 14 S. D. 229.

Territory from an independent district in one county may be detached and attached to a district in another county. *Ind. Dist. No. 2 v. District No. 37*, 106 N. W. 302.

Provided, further, that when an independent school district containing an incorporated city or town is situated so near the center of a civil or congressional township as to leave a fraction of said civil or congressional township impracticable or inconvenient for school purposes, after attaching adjacent territory to said independent school district, to the two miles' limit as provided by law, then in that case the committee provided for in this act may, upon a petition of the majority of the electors of such civil or congressional township attach the surrounding territory and make the independent district to conform to the civil or congressional township line for school purposes only, and in such cases the committee may by a majority vote thereof, upon the petition of two-thirds of the electors of such surrounding

territory, and two-thirds of the electors of such independent district, issue its order attaching such surrounding territory to such independent district as aforesaid and all foregoing provisions shall apply to such actions of said committee except that said orders shall go into effect at the expiration of thirty days from the date thereof, and it shall not be necessary that the actions and decisions of such committee be ratified by the district school board or board of education before the issuance or going into effect of such order.

Seventh. An appeal may be taken from any decision of the committee by any or all the petitioners or by any of the school districts interested, to the circuit court of the county in which the territory proposed to be annexed or detached is situated, upon notice in writing to the other interested parties, that is, to the committee and school boards and boards of education interested and the petitioners, as the case may be, by service upon any member of the committee, upon any member of each of the school boards and boards of education interested and upon any one of the petitioners and upon filing a bond in the office of the clerk of the circuit court in the sum of two hundred and fifty dollars, with at least two sureties to be approved by the clerk of the circuit court, conditioned that appellant will pay all costs therein that may be adjudged against him. Proof of the service of said notice of appeal, by affidavit, shall be filed with the clerk of said circuit court; after the filing of the bond for costs and proof of service of the notice of appeal in the office of the clerk of the circuit court, the committee shall within five days transmit to the clerk of the circuit court the petition, and decision of the committee, and all original papers in the matter in controversy. Said committee may be compelled by said circuit court by an order entered upon motion to transmit such decision and petition and original papers, and may be fined for neglect or refusal to transmit the same. The clerk of the circuit court shall receive and file said papers and docket the same in the manner as on appeals from justice court, and shall receive the same fees therefor. The matter shall be tried anew in the circuit court, and the parties appealing to be designated and be the parties plaintiff, and the other parties interested the parties defendant. The action shall stand for trial at the term of the circuit court next convening after the filing of the bond and notice of appeal in the office of the clerk of the circuit court. No note of issue or notice of trial need be served. The same proceeding shall be had as in any civil action, and all judgments, orders, or decisions made therein shall be valid, mandatory, and enforceable as by law provided for judgments or orders in any civil action.

Sec. 177. School District a Body Corporate] Every district organized under the provisions of this article shall be a body corporate, and shall possess the usual powers of corporation for public purposes, and may sue and be sued, and be capable of contracting and being

contracted with, and of taxing and holding any land for a school site, not exceeding two acres chosen by the board of education at a regular meeting of said board, and in case the owner or owners of said land, or any part thereof, shall refuse or neglect to grant such site to the district, then said district shall have power to take such land for said site in the manner provided by law for the taking of private property for public use. And shall have power to hold and convey such personal or real property as it may at any time possess. All actions brought by or against such corporation shall be in the name of the board of education of said independent district of the county of.
 of the state of South Dakota.

Sec. 178. Shall Maintain School Not Less Than Six Nor More Than Ten Months] Each corporation organized under this article shall maintain a system of free common schools which shall be kept open not less than six nor more than ten months in any one year and shall be free to all children of legal school age residing within such corporation.

Sec. 179. In all school districts organized under this article there shall be a board of education consisting of five members elected at large by the qualified electors thereof who shall be elected in the year 1908, two for a term of one year two for a term of two years and one for a term of three years. Every year thereafter there shall be elected each for a term of three years two members of such board except in years which are divisible by three when one member shall be elected and each shall serve till his successor is elected and qualified. Provided, that no member of the city council or board of trustees shall be a member of the board of education.

While it would be better if the county superintendent should not be a member of the board of education, yet there is nothing prohibiting him from being a member, but he cannot serve as the president of the board. Opinion by Philo Hall, Attorney General.

Sec. 180. The school election shall be held on the third Tuesday of June, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, and no longer. Notice if such election shall be given by the clerk of such district, by publication in a newspaper, if one shall be published within such district, and by posting such notices in five of the most public places in such district, at least ten days before such election, a list of the officers to be elected to be designated in such notices, as well as the place where and the time when such election will be held. At this election there shall be elected members of the board of education as provided herein, and a treasurer of the board of education who shall be elected in the year 1908 and every three years thereafter for a term of three years, and he shall hold his office until his successor is elected and qualified. (Session Laws 1909.)

Section 181. (1) Notice of Election] Not less than ten days before any annual or other school election, the secretary of the board shall cause notices to be posted in public places distributed throughout the district and shall state therein the officers to be elected, with terms of each, and questions to be submitted at such election.

Such notices shall also be published in some newspaper at least three times, beginning not less than ten days prior to said election. At this election there shall be elected members of the board of education, as provided by law, and a treasurer of the board of education, who shall be elected in the year 1911 and every three years thereafter for a term of three years, and he shall hold his office until his successor is elected and qualified.

(2) Nominations for School Offices] Candidates for school offices shall be nominated by filing with the secretary of the board of education not earlier than the fifteenth day of May nor later than the first day of June, certificates of nomination for the office to be filled. Such certificates shall be in writing, shall contain the name of the candidate, his residence, business address and the office for which he is named, and must be signed by twenty or more qualified electors of the school district.

Each elector signing a certificate of nomination shall add to his signature his place of residence, his business and his postoffice address, and shall declare that he has not joined in nominating any other person for the office to be filled. Such signatures need not all be appended to one paper. No certificate of nomination shall contain the name of more than one candidate for any office to be filled, but each elector may sign as many certificates as there are officers to be elected for a particular term of office.

(3) No Party Designation] In order to separate party politics so far as possible from school affairs, no descriptive word, words, or symbol to designate the party or principle of any nominee, shall appear on the certificate of nomination, or be used or printed on the ballot.

(4) Withdrawal from Nomination] Any person whose name has been filed as a candidate may cause his name to be withdrawn from nomination by request in writing signed by himself and properly acknowledged and filed with the secretary of the board at least five days prior to the day of election; and no names so withdrawn shall be printed on the ballots to be used.

(5) Publication of Nominees] The secretary shall cause to be published in one or more newspapers, published in the county, at least four days before the day of election, all nominations certified to him under the provisions of this article.

(6) Ballots, Etc] The secretary shall provide proper ballots similar in form to those authorized by law for municipal elections,

except as to party affiliation, on which shall be printed the names of the candidates for the respective offices, each being given a position for each office in the order of the priority of the filing of their nominating certificates. The secretary shall provide the voting booths required by law in each polling place and such supplies, poll books, stationery, etc., as may be necessary.

(7) **Conduct of Election]** Polling places shall be provided with separate booths for each 150 electors, and boards of education in cities of the first and second class and in cities under commission, shall provide polling places in each ward thereof for all electors residing within the limits from which the children are required to attend at said school house, and two judges and one clerk shall be appointed by the Board of education, who shall conduct said election in accordance with the general election laws of the state as applied to municipal elections, except as provided in this article.

Provided, that if the legal candidates do not exceed in number the offices to be filled, the board of education may designate a less number of polling places at their discretion.

The polls shall be kept open between the hours of 12 o'clock noon and 5 o'clock in the afternoon and no longer. The compensation of the officers of election shall be fixed by the Board and paid from the district treasury. .

(8) **Returns of Election]** The returns from said election shall be certified by the officers in each polling place, and the ballots, properly sealed in ballot boxes, together with the poll books, shall be placed forthwith in the custody of the secretary of the board, who shall keep said ballot boxes inviolate for at least thirty days after the canvass of the returns.

(9) **Canvass of Returns]** The results of said election shall be canvassed and declared by the board of education at the next regular meeting thereof, and certificates of election shall be issued by the secretary of the board to the successful candidates. (Chapter 133 Session Laws 1911.)

Sec. 182. Vacancy Filled by Board] The board of education shall have power to fill any vacancy for the unexpired term which may occur in their body;

Provided, that any vacancy occurring more than thirty days previous to the annual election shall be filled at the first annual election thereafter. Any vacancy in the office of treasurer shall be filled by the board of education by appointment. Said appointee shall not be a member of said board.

Sec. 183. The board of education at its first regular meeting in July of each year following their election shall organize by the election of a president and vice president, each of whom shall serve for a term of one year; and at their regular meeting in July each year they shall also elect a clerk, not a member of the board, who shall receive such compensation for his services as the board may allow; the members of the board of education shall receive no compensation.

Provided, that in districts newly organized under this article, the board shall, within thirty days after their election, proceed to organize and elect officers as aforesaid, who shall serve until the time of the next regular annual meeting.

Sec. 184. Oath of Members and Other Officers] Each member of the board of education and officer provided for in this article shall take and subscribe an oath or affirmation to support the constitution of the United States, and the state of South Dakota, and faithfully to perform the duties of his office.

Sec. 185. Bond of Clerk and Treasurer] Before entering upon the discharge of his duties the clerk of the board of education shall give a bond in the sum to be fixed by the board, not less than five hundred dollars, with good and sufficient sureties, to be approved by the board.

The treasurer shall execute a bond in such sum as that body may require with sufficient sureties to be approved by the board, conditioned for the faithful discharge of his duties as treasurer of such board.

The oath and bond of the clerk shall be filed with the treasurer. All other oaths and bonds shall be filed with the clerk, but the clerk shall immediately notify the county auditor and the county superintendent of the filing of such oath and bond.

Sec. 186. Meetings of the Board] The regular meetings of the board of education shall be upon the last Friday of each month, but may in the discretion of the board be on the second Friday also and special meetings may be held from time to time as circumstances may demand.

Sec. 187. It shall be the duty of the president to appoint all committees and to countersign all warrants drawn upon the treasury for school money. It shall be the duty of the clerk to be present at all meetings of the board, keep an accurate journal of its proceedings, take charge of its books and documents, sign all warrants for school money, and perform such other duties as the board may require.

Sec. 188. Report of Clerk] The clerk of the board of education at the close of each school year shall make an annual report of the condition, financial as well as educational of all the schools of the corporation, a copy of which shall be sent to the county superintendent. Said report or such portion of it as the board of education shall considere

advantageous to the public shall be printed in a public newspaper or in pamphlet form.

Sec. 189. Report of Treasurer] The treasurer shall prepare and submit in writing a monthly report of the state of the finances of the corporation and shall when required produce at any meeting of the board all books and papers pertaining to his office. He shall pay money only upon a warrant signed by the president, or in his absence the vice president, and countersigned by the clerk.

Sec. 189½. The board of education of every school district organized under special charter, all school districts organized as independent districts in all incorporated towns and cities are hereby required to publish in a newspaper of general circulation in said school district, if there be a newspaper published in said district, and if there be no newspaper published in said district then to post in three public places in said district, an itemized statement of the receipts and expenditures of said district for year ending April 30th. Provided, that such report shall be published or posted as the case may be within twenty days after April 30th, and that the cost of the publication thereof shall be paid for out of the general fund of such district. Such statement shall be published in two consecutive issues of such newspaper. Provided, that at the end of the fiscal year a similar statement for said fiscal year shall be printed in pamphlet form for general distribution, together with statements in detail showing expenditures for each special department, repairs, improvements, texts, library, apparatus, playgrounds, etc., and with such other data including assessed valuation and tax levy in mills as the board of education may determine. (Chapter 135 Session Laws 1911.)

Sec. 190. Graded and High School May be Organized] The board of education shall have power to organize and maintain a system of graded schools, to establish a high school whenever, in their opinion, the interest of the school corporation demand the same, and to exercise sole control over the school and school corporation.

Sec. 191. Tax Levy] The board of education shall on or before the fifteenth day of August of each year levy a tax for the support of the schools of the corporation for the fiscal year next ensuing not exceeding in any one year twenty-five mills on the dollar on all personal and real property within the district which is taxable according to the laws of the state, and which levy the clerk of the board of education shall certify to the county auditor, who is hereby authorized and required to place the same on the tax roll of said county as the taxes of the county and paid over by him to the treasurer of the board of education, of whom he shall take a receipt in duplicate, one of which he shall file in his office and the other he shall transmit to the clerk of the board of education. "And such receipt shall show the proportion-

ate amounts belonging to the several funds of said board of education, apportioned by the treasurer thereof according to the relative amounts levied by such board for the current year."

Sec. 192. Taxable Property] The taxable property of the whole corporation, including the territory attached for school purposes, shall be subject to taxation.

Sec. 193. Error in Tax List Corrected] Whenever an error occurs in any school corporation or district tax list, the board of county commissioners may correct and refund such improper collection of school taxes the same as for other county taxes.

Sec. 194. Bonds] Whenever it shall become necessary in order to raise sufficient funds for the purchase of a school site or sites, to erect suitable building or buildings thereon, or to fund a bonded indebtedness or any outstanding indebtedness, it shall be lawful for the board of education of every corporation coming under the provisions of this article to borrow money for which they are hereby authorized and empowered to issue bonds bearing a rate of interest not exceeding seven per cent per annum, payable annually, or semi, annually, at such places as may be mentioned upon the face of said bonds, which bonds shall be payable in not more than twenty years from their date, and the board of education is hereby authorized and empowered to sell such bonds at not less than par.

Provided, that no bonds shall be issued until the question shall be submitted to the people and a majority of the qualified electors who shall vote on the question at an election called for that purpose shall have declared by their votes in favor of issuing such bonds.

Provided, that the provisions of this section shall not apply to cities of the first class as the same are provided for by article 9 of this chapter.

Sec. 195. Election Called by Mayor] It shall be the duty of the mayor of such city or town, upon request of the board of education to call an election to be conducted in all respects as are the elections for city or town officers, in the same corporations (except that returns shall be made to the board of education) for the purpose of taking the sense of such corporation upon the question of issuing such bonds, naming in the proclamation of such election the amount of bonds asked for and the purpose for which they are to be used;

Provided, that where the incorporation is not organized for civil government, the board of education may call and conduct the election provided for in this section.

Sec. 196. Bonds Signed by President and Attested by Clerk] The bonds, the issuing of which is provided for in the foregoing section shall be signed by the president, attested by the clerk, and countersigned by the treasurer of the board of education, and said bonds

shall specify the rate of interest, and the time when the principal and interest shall be paid, and each bond so issued shall be for a sum not less than fifty dollars, but no corporation shall issue bonds in pursuance of this act in any sum (including other indebtedness) exceeding five per cent of its assessed valuation.

Sec. 197. Tax Levy to Pay Bond and Interest] The board of education at the time of its annual levy of taxes for the support of schools as herein provided shall also levy a sufficient amount to pay the interest as the same accrues on all bonds issued under the provisions of this article, and also to create a sinking fund for the redemption of said bonds which it shall levy and collect in addition to the rate per cent authorized by the provisions aforesaid for school purposes and said amount of funds when paid into the treasury shall be and remain a specific fund for said purposes only and shall not be appropriated in any other way except as hereinafter provided.

Sec. 198. Bonds Issued Hereafter] Any school district which shall hereafter issue bonds shall at or before the time of so doing provide for the levy of an annual tax sufficient to pay the interest and principal when due, and such levy shall be irrevocable until such debt is paid;

Provided, that such levy shall not exceed fifteen per cent in any one year of the debt to be paid. All money raised for the purpose of creating a sinking fund for the final redemption of all bonds issued under the provisions of this article shall be invested annually by the board of education in bonds of the state of South Dakota or of the United States, or the board may buy and cancel the bonds of the district whenever such may be purchased at or below par, or to purchase its outstanding registered warrants that will be paid prior to the time such bonds will become due.

Wilson v. Board of Education, 12 S. D. 535.

Sec. 199. Interest Coupons] Whenever the interest coupons of the bonds hereinbefore authorized shall become due, they shall be promptly paid by the treasurer, upon presentation, out of money in his hands collected for that purpose and he shall endorse upon the face of such coupons in red ink the word "Paid" and the date of payment, and sign the initials of his name.

Sec. 200. School Property Pledged for Indebtedness] The school fund and property of such civil corporation and territory attached for school purposes is hereby pledged for the payment of the principal and interest of the bonds mentioned in this article as the same may become due.

Sec. 201. Bond and Warrants Registered] It shall be the duty of the clerk of the board of education to register in a book provided for that purpose the bonds issued under the provisions of this article,

and all warrants issued by the board, which registration shall show the number, date and amount of said bonds and warrants and to whom made payable.

Sec. 202. Expenditures of Funds Regulated] No expenditure involving an amount greater than one hundred dollars shall be made except in accordance with the provisions of a written contract, and no contract involving the expenditure of more than five hundred dollars for the purpose of erecting any public building or making any improvements shall be made except upon sealed proposals and to the lowest responsible bidder.

Sec. 203. No Sectarian Doctrine] No secearian doctrine may be taught or inculcated in any of the schools of the corporation, but the Bible without sectarian comment, may be read therein.

Sectarian school defined. *Synd. of Dakota v. State*, 2 S. D. 366.

Sec. 204. Examining Committee in Cities] The board of education in cities of the first and second class at such times as they shall deem expedient, shall elect a superintendent of schools, in no case a member of their own body, whose duty it shall be to have a general supervision of the schools of the corporation, subject to the rules and regulations of the board, who shall hold his office during the pleasure of the board and shall receive such compensation as the board may allow.

The assistant superintendent or assistant principal is bound to follow reasonable requirements and to perform reseasonable duties assigned by superintendent or principal. *Morrow v. Chamberlain Bd. of Edu.*, 7 S. D. 553.

The board shall also appoint two competent persons, who with the superintendent as chairman, shall be styled the examining committee of the board of education.

Provided, that the examining committees in cities of the first class shall have the power to examine teachers for their own schools and to issue certificates authorizing persons to teach therein in accordance with rules fixing the conditions for issuance of such certificates as may be adopted by the board of education; and such certificate shall be the sole license required by law to teach in such cities. Provided, that the examination papers and certified copies of credentials upon which such certificates were issued shall be kept on file in the office of the clerk of the board of education.

The principal or superintendent of schools of all independent districts employing such officer, and in such independent districts as do not employ such an officer, the county superintendent alone, shall examine all teachers employed to teach in the schools of any city, town or other independent district, the same as other teachers of the country are examined except as hereinafter provided and, no city superintendent or principal shall be employed who does not hold a first grade or state certificate or a state diploma. In no case shall any teacher

be employed to teach, in such schools who does not hold a certificate as above provided, or a state certificate, or a state diploma; and any contract made contrary to the above is hereby declared void.

The above provisions shall be construed as giving the examining committee of the board of education in cities of the first class, and the superintendent or principal of schools of any city or town, or other independent district, advisory power in the examination of teachers for their respective schools, and they may add such questions as they may deem wise in the examination in order to test the qualifications of teachers for any particular grade or special work.

In cities, towns or other independent districts other than cities of the first class the superintendent of schools may endorse his approval upon a teacher's county certificate or he may issue a special statement or certificate in regard thereto. In cities of the first class such endorsement on a teacher's county certificate or such special statement or certificate shall be signed by all or a majority of the examining committee of the board of education and the said statement or certificate with the teacher's county certificate shall be exhibited to the board of education at the time of contracting for a school.

Provided, no teacher who holds a state or county certificate under this article is excused from the county institute except for good and valid reasons.

Provided further, that the city superintendent shall revoke the certificate, issued by the examining committee of which he is chairman. of those persons who do not attend the county institute, except as hereinbefore provided.

Sec. 205. Special Acts Not Repealed] Nothing in this article contained shall be construed as repealing any special act or acts or any portion thereof, creating or relating to any schools in cities or towns or independent school districts.

ARTICLE XII

School Libraries

Sec. 206. Library Fund Created] The county treasurer shall withhold from the apportionment received from the interest and income fund or other income for the schools of his county annually an amount equal to ten cents per capita for each person of school age, which money shall constitute a library fund and shall be used in the purchase of library books as hereinafter provided.

Sec. 207. County Library Board] The county superintendent, county auditor, state's attorney, and all superintendents of city schools, and principals of schools in villages employing more than one teacher,

shall constitute the county library board. Annually, between the first day of July and the first day of September the county library board shall meet at the call of the county superintendent who shall be chairman of said board, and expend the money provided for in the preceding section, in the purchase of books selected from the list prepared by the state superintendent.

Sec. 208. Librarian] The clerk of the school district shall act as librarian, and shall receive and have the care and custody of the books, and shall loan them to the teachers, pupils and other residents of the district in accordance with the regulations prescribed by the state superintendent. The clerk shall give a receipt for and keep a record of the books received from the county library board, and shall include in his annual report such library statistics as the state superintendent may require. During the time school is in session the library shall be placed in the schoolhouse, and the teacher shall act as librarian under the supervision of the district clerk.

Sec. 209. Bookcases shall be Provided] The school board shall provide suitable cases for the books in each school.

Sec. 210. Library Circuits] The county library board shall have power to designate library circuits, each composed of not more than ten schools. When one or more such library circuits shall have been organized, it shall be the duty of the county superintendent to employ a responsible person to move all the libraries provided for. These removals shall be made in January and July of each year and in such order as the county superintendent shall direct, and the person making such removal shall receive therefor ten cents per mile for the distance necessarily traveled in making such exchange. Such mileage shall be paid by the county treasurer upon warrant issued by the county auditor, and shall be charged by the county treasurer pro rata to the various school districts affected. Provided no warrant for such mileage shall issue, except on presentation of a voucher signed by the county superintendent. "Provided, that the boards of education in cities of the first and second classes, may select such books as they may deem wise and shall forward a list of such books to the chairman of the library board."

Sec. 211 Compensation of Members of Library Board] The members of the county library board shall receive no compensation. The expense of postage, express and freight necessarily incurred by the county board in securing the books shall be a charge upon the library fund provided for in section 206.

Sec. 212 Warrants Upon Library Fund] The county treasurer shall pay out money in the library fund upon vouchers signed by the county superintendent and county auditor.

ARTICLE XIII

Township High Schools

Sec. 213. Election] Upon the petition of not less than fifty freeholders of any civil township filed with the township clerk at least fifteen days preceding the regular election of township supervisors, it shall be the duty of the said clerk to notify the voters of said township that an election for or against a township high school will be held at the said next regular election of township supervisors by posting notices of such election in three public places throughout such township for at least ten days before the election, which notices may be in the following form, viz.:

High School Election

Notice is hereby given that on Tuesday, the.....day of March, A. D.....an election will be held at..... for the purpose of voting for or against the proposition to establish a township high school, for the benefit of the township No..... range No.....The polls for said election will be open at..... and close at..... o'clock on said day.

.....
Township Clerk.

Sec. 214. Ballots] The ballots for such election shall be received and canvassed as in other township elections.

Sec. 215. Township Board of Educator] If a majority of the voters at such election shall be found to be in favor of establishing a township high school, it shall be the duty of the supervisors of the township to call a special election on any Tuesday within sixty days of the time of the election etsablishing the township high school for the purpose of electing a township board of education, to consist of three members, to-wit: one director, one clerk, one treasurer; notice of which election shall be given for the same time and in the same manner as provided for in the election of township supervisors. The members elected shall determine by lot at their first meeting the length of term each is to serve. One of the members shall serve for one year, or for two years, and one for three years, from the second Tuesday of July next succeeding their election. Successors shall be elected at the same time and place as the regular township elections are held. Whenever a vacancy accurs the county superintendent shall appoint a successor who shall serve until a successor is elected and qualified. Within thirty days after the election, the members elect of the township board of education, shall qualify by making oath that they will support the constitution of the United States, the constitution of the state of South Dakota, and faithfully discharge the duties of their trust. Each member shall further qualify by giving a bond to

the high school township; the director in the penal sum of one hundred dollars, the clerk in the penal sum of two hundred dollars, and the treasurer in such sum as may be fixed by the clerk and director, but not less than double the sum of the money as nearly as can be ascertained to come into his hands in any one year. The bonds of the clerk and director shall be signed by at least one surety, and that of the treasurer shall have at least two sureties. The bonds of each officer shall be approved by the other two members of the board. Said bonds shall be conditioned that he will faithfully perform his duties as a member of the township board of education, and account for any moneys or property of such high school township that may come into his hands or care. Said oath shall be in writing and may be taken before any one qualified to administer oaths under the law of the state, and said oaths and bonds of the members of the first board shall be approved by the township clerk. All bonds of the board of education shall be filed with the auditor of the county wherein such high school township is organized. Failure to qualify within thirty days shall ipso facto create a vacancy.

Sec. 216. Duties of Township Boards of Education] It shall be the duty of the township board of education to establish at some central point most convenient to a majority of the pupils of the township a high school for the education of the more advanced pupils. They shall have charge, directions and management of the high school of the township, and the care, custody and control of all the property belonging to it. They shall assist and co-operate with the teacher or teachers in the government and discipline of the school and may make proper rules, and regulations therefor. They may suspend or expel from school any person insubordinate or habitually disobedient; provided, that such suspension shall not be for a shorter period than ten days, nor beyond the end of the current term of school.

Sec. 217. Union of Two or More Townships] In like manner the voters and supervisors of two or more adjoining townships may co-operate in the establishment and maintenance of a high school on such terms as they may, by written agreement made and signed by the boards of supervisors, enter into.

Sec. 218. Discontinuance of a Township High School] When any township or townships shall have organized a high school and wish to discontinue the same upon petition of not less than a majority of the legal voters of said township or townships, filed with the township clerk or clerks of said township or townships, at least fifteen days preceding the regular election of supervisors, it shall be the duty of said clerks to notify the voters of the township that an election will be held on the day of said regular election of supervisors for the purpose of voting for or against discontinuing the township high school, which notice shall be given in the same manner and for the same

length of time, and may be in substantially the same form as the notice provided for in section 213 of this act.

Sec. 219. The ballots for such election shall be received and canvassed in the same manner as provided for in section 214 of this act. If a majority of the votes cast at such election shall be in favor of discontinuing the high school, it shall be the duty of the board of education to discontinue the same, and turn all the assets of said high school into money and deposit the same in the county treasury to the credit of the school funds of the various districts or parts of districts embraced within such high school township or townships, in proportion to the assessed valuation of such districts or parts of districts to be used for general school purposes.

Sec. 220. Meetings of Board of Education] The regular meetings of the board of education for the transaction of business shall be on the second Tuesday of July, the last Tuesday of November and March, at such hour and place as may be fixed by the board of education; provided that the clerk of the board shall, when requested by a majority of the board call a special meeting at any time, by giving written notice to each member of the board at least three days prior to the meeting.

Sec. 221. Tax Levy] The board of education shall have power to levy upon the property of the township a tax for high school purposes of not exceeding ten mills on the dollar in any one year, which levy shall be made by resolution of that board at their regular July meeting. The clerk shall immediately thereafter notify in writing the county auditor of the tax so levied. The board of education shall have power and may direct the removal of the school house to a more convenient location upon the petition of two-thirds of the electors of the entire township.

Sec. 222. Corporate Name and Powers] Every civil township organized for the purpose of establishing a township high school under this act, shall be and is hereby constituted a corporation for high school purposes under the name of the civil township, the territory of which it comprises, e. g.High School Township, and may under its name sue and be sued, contract and be contracted with, purchase, hold and use personal and real property for the purpose mentioned in this act.

Sec. 223. School Board as Board of Education] Where a school township system now exists the school township board shall assume the duties of the board of education herein provided for.

Sec. 224. Salary of Board] Members of the board of education, provided for in section 215 of this act, shall receive a salary of \$1.50 per diem for each day actually spent in the interest of the school district; provided, such salary shall not exceed twenty-five dollars per member in any one year.

ARTICLE XIV

Uniformity of School Text-Books

Sec. 225. County Board of Education] The county superintendent of schools, the president of the board of education of all cities or towns, the county auditor, the county state's attorney, the board of county commissioners, their successors in office and one person from each commissioner's district who shall be selected by the members of the school boards of such commissioner's district present at a meeting to be called by the county superintendent, shall constitute the county board of education of each county in this state for the purpose of selecting and adopting all the text-books needed for use in public schools in the county. The county superintendent of schools shall in all cases be chairman of the county board of education and the county auditor, secretary; and a majority of said board shall constitute a quorum for the transaction of business.

The members of a board of education of cities and towns organized as independent school districts are not entitled to act at a meeting of members of school boards for the selection of a member for the county board of education from commissioner districts. Opinion by Attorney General S. W. Clark, May 27, 1907.

Sec. 226. Meeting of County Board of Education] The county board of education shall meet at the office of the county superintendent of schools of each county of the state on the second Tuesday of June, 1907, and every five years thereafter and select and adopt a complete series of school text-books to be used in all the schools of the county; provided, that nothing in this article shall be construed to prevent any county board of education from selecting a series of text-books from two or more publishers; provided, further, that the board of education in cities and towns may adopt other or additional books by the same or other authors. The county board of education shall advertise for twenty days in a newspaper published in each county that at a time and place named in said notice said board will receive sealed bids for furnishing school books to the pupils of all public schools in the county as provided in this article for a term of five years. Other necessary books shall be purchased and contracted for at the same time.

Sec. 227. Duties in Selecting Text-Books] Before selecting and adopting school text-books in accordance with the provisions of this article, it shall be the duty of said board of education to take into consideration the books used in the county, and all books submitted by publishers, and most carefully consider the price, the type, the material, the binding and other items that go to make up a desirable text-book, and no text-book shall be adopted whose price is above the contract of wholesale price at which said books were furnished to any other state, county or school corporation in the United States during the year previous to such adoption. The county superintendent shall

annually at the close of the year make a report to the county board of education as to the operation of the school book contract.

Sec. 228. Notice of Meeting] The county superintendent shall notify each member of the county board of education in writing of the time and place of meeting at least ten days before the date of said meeting, and he shall prepare and furnish such information as shall assist the board in acting for the best interests of the people.

Sec. 229. Contract for Books and Designations of Depositories] The board of county commissioners shall contract with the publishers of such books as have been adopted by the county board of education designating the price at which such books shall be furnished to them or to their authorized agents, and they shall designate a depository for each school corporation in the county where school books shall be sold to pupils at not more than ten per cent above cost, and they shall pay for the books and transportation of the same, so contracted for, out of the general fund, on warrants signed by the county auditor and countersigned by the chairman of the board of county commissioners;

Provided, that the same depository may be designated for one or more school corporations.

The word "board" in this section refers to school board. Opinion by S. W. Clark, Attorney General.

Sec. 230. Provisions Contained in Contract] The following shall constitute a part of every contract with publishers as provided in this article, whether contained in such contract or not; whenever the state of South Dakota shall have published a sufficient number of text-books used in the public schools of the state, to supply the schools, of any county in the state, upon notice given by the governor to the county auditor of any county this contract shall be void as far as it relates to such book, and the county auditor shall immediately notify the publishers holding such contract. The county commissioners of such county shall forthwith supply all the schools of said county with the books printed by the state. The auditor of said county shall on or before the 11th day of each calendar month send moneys for all state's books sold, to the state treasurer, together with such reports as the governor of the state may direct.

Sec. 231. Bond of Depository] The board of county commissioners may require a good and sufficient bond from each depository designated by them as their agent, and such agent shall be required to file a statement with the county auditor on or before the first day of January, April, July and October, showing the number and kinds of books sold by him, and the number and kinds of books on hand in such depository on the last day of the preceding month, and all moneys due the county by such depository shall be paid into the county treasury at the time of filing such statement. The county auditor shall supply each depository with proper blanks for making such report.

Sec. 232. List of Books for Each School] The county board of education shall furnish a printed list of books adopted designating the retail price of each, and supply one or more copies to each school corporation and to each depository designated. The secretary or clerk of each school corporation shall post said price list in each room under his supervision.

Sec. 233. Free Text-Books] Upon a written petition of a majority of the electors of any school corporation asking that the school books be furnished free to the pupils, it shall be the duty of said board to arrange and furnish the free use of books to the pupils of such corporation under such rules and regulations as the school board may determine.

A member of a school board or board of education or a clerk of a board of education cannot lawfully act as depository of school books. Opinion by S. W. Clark, Attorney General.

Sec. 234. Bookcase] Said school board must procure a safe bookcase in which said books shall be kept whenever it shall be decided to supply its school books direct to the pupils, and a careful invoice must be reported at the close of each term by the secretary. The books shall remain the property of the school corporation and can only be used on order of the board.

Sec. 235. Books Adopted for Five Years] Books once adopted or contracted for under the provisions of this article shall not be changed for a period of five years, except as heretofore provided, and on the request of at least two-thirds of the school boards of the county.

Sec. 236. Prohibition on Teachers] No school teacher, county or city superintendent, or member of any county board of education within the state of South Dakota shall be allowed to receive any emolument, cash or otherwise from any publisher or publishers, of school books, in payment for a vote or a promise to vote for or use their influence for any book or books to be used in the schools under their charge. Neither shall any agent or other person be allowed to give or offer any emolument as heretofore described nor promise of work nor other inducement to any teacher, county or city superintendent, or member of any county board of education or other board of education, for any vote or promise to vote, or to use their influence for any book or books to be used in the schools under their charge;

Provided, that nothing in this section shall be construed to prevent any school official from receiving a reasonable number of sample copies for investigation, with a view to obtain information as to the books or series of books for which such official shall cast his vote;

Provided, that nothing in this section shall be construed to prevent any teacher from obtaining employment from any publishing house, in schools not under their direct charge. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor.

Provided, that there shall be exempted from the provision of this article all school corporations of cities owning and using a system of text-books.

ARTICLE XV

Sec. 237. Plans for School Buildings Approved by State Superintendent] In order that due care may be exercised in the heating, lighting and ventilation of public school buildings hereafter erected, no school house shall be erected by any board of education or school district board in this state until the plans and specifications for the same showing in detail the proper heating, lighting and ventilation of such building shall have been approved by the superintendent of public instruction.

School houses shall have in each class room at least fifteen square feet of floor space, and not less than two hundred cubic feet of air space, per pupil, and shall provide for an approved system of heating and ventilation by means of which each class room shall be supplied with fresh air at the rate of not less than thirty cubic feet per minute for each pupil, and have a system of heating capable of maintaining an average temperature of seventy degrees Fahrenheit during the coldest weather.

ARTICLE XVI

Sec. 238. Study of Physiology and Hygiene in the Public Schools] In addition to the branches in which instruction is now required by law to be given in all schools supported wholly or in part by public money, instruction shall also be given as to the nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of relative physiology and hygiene. And such subjects shall be taught as thoroughly as arithmetic and geography are taught in said schools. Such instructions shall be given orally to pupils who are not able to read, and shall be given by the use of text-books in the case of pupils who are able to read. And such instruction shall be given as aforesaid to all pupils in all public schools in the state.

Sec. 239. The text-books used for the instruction required to be given by the preceding section shall give about one-fourth of their space to the consideration of the nature and effects of alcoholic drinks and narcotics; and the books used in the higher grade of graded schools shall contain at least twenty pages of matters relating to this subject, but no book in which the required amount of this subject shall appear in whole or in part as a separate chapter at the end of the book shall be considered as complying with the requirements of the statute. Text-books on physiology in use in the schools at the

time this act takes effect, which are not in accordance with the requirements of this section, shall be changed for books satisfying the requirements of this section except when previous contracts as to such text-books are now in force.

Sec. 240. No certificate shall be granted to any person to teach in the public schools of the state or in any of the educational institutions receiving money from the state, after the first Monday of July, A. D. nineteen hundred six (1906), who has not passed a satisfactory examination in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system.

Sec. 241. And be it enacted, that it shall be the duty of county and city superintendents and boards of all educational institutions receiving aid from the state to report to the state superintendent of public instruction any failure or neglect on the part of the boards of school trustees, boards of education and boards of all educational institutions receiving aid from the state to make proper provision, in any and all the schools under their jurisdiction, for instruction in the nature of alcoholic drinks and narcotics and their effect upon the human system, in connection with the several divisions of the subject of relative physiology and hygiene, as required by this act; and such failure on the part of trustees, boards of education and boards of educational institutions receiving money from the state, thus reported or otherwise satisfactorily proved, shall be deemed sufficient cause for which the warrant shall be withheld for the state appropriation of school money to which such district or educational institutions would otherwise be entitled.

ARTICLE XVII

School Corporations

Sec. 242. Relating to Independent School Districts] All independent school districts organized as independent school districts by special act or charter, that at the time of organization included within their boundaries an incorporated city, town or village organized by special act or charter, that has subsequently organized and is now a city under the general law for the government of cities, and such independent school district has continued to act under the special act or charter organizing said independent school district, shall reorganize and be governed by the general law for the government of schools in cities and towns and adjacent territory organized as independent school districts.

Sec. 243. The boundaries of such independent school districts shall remain the same as under the special act or charter unless changed in accordance with the provisions of law for changing the

boundaries of such independent school districts. Provided, this act shall not apply to any independent school district, any part of which is in more than one county.

Sec. 244. That whenever the city within the boundaries of any school district is divided into wards, it shall be the duty of the council of said city, on or before the first Monday in April, 1905, to attach to said wards the adjacent territory within said independent school district, and not within the limits of said city, and at the ensuing city election there shall be elected a board of education, as provided for by article eleven of this act. The board of education so elected shall meet and organize on the first Monday succeeding their election and shall at said meeting determine by lot which of said members shall hold for two years and which for one year. That after said organization said independent school district shall be deemed to be organized under the general law, and the special act or charter organizing said independent school district shall thereafter and thereby be annulled.

Provided, that until such annulment, the act of the officers of said independent school districts are hereby validated and legalized and the reorganization of all cities, towns and villages herein referred to is hereby validated and legalized.

Sec. 245. It being one of the purposes of this act to re-arrange, collect and codify the laws of the state, relating to the public school, therefore Chapter 22 of the Revised Political Code of 1903, of South Dakota, and Chapters 75, 126, 127, 128, 129, 130, 131, 132 and 133 of the Session Laws of 1903; and Chapters 68, 99, 100, 102, 103, 158 and 162, of the Session Laws of 1905, and all other acts and parts of acts in conflict with this act, are hereby repealed. (Session Laws 1909.)

Sec. 246. Appropriation Authorized] That the city councils of all cities within this state, the school boards of all cities within this state, and trustees and school boards of all towns and villages, and the county commissioners of all counties within this state, are hereby authorized and empowered in their discretion, to appropriate funds for the purpose of defraying the necessary expenses of a proper observance of Memorial Day each year.

Sec. 247. Duty of County Judge] Whenever complaint is made by the superintendent of the South Dakota school for the deaf or the South Dakota school for the blind or by any other person before any county judge of the state of South Dakota, that any deaf or blind child of proper age is being deprived of proper education, by the refusal or neglect of its parents, guardian or custodian, and it shall appear that such deaf or blind child is a resident of the county wherein complaint is made, it shall be the duty of such judge to summon such parents, guardian or custodian before him; and if any material facts are disputed, it shall be the duty of such judge to sum-

mon and examine witnesses as to the facts, and if proofs be sufficient to establish the facts set forth in the complaint, or the facts be admitted, said county judge in his discretion shall, after considering the welfare of such child and the welfare of its parents, order such deaf or blind child sent to some public or private school for the education of the deaf or blind as the case may be but in no case so as to cause any expense to be made against such county except as hereinafter provided. (Chapter 140 Session Laws 1911.)

Sec. 248. Expense—By Whom Paid] If in the judgment of such county judge the parents, guardian or custodian, are properly chargeable with the expense of transporting such child to such institution and are financially able to do so then the said judge shall order and adjudge, that the said parents, guardian or custodian shall defray such expense, but if otherwise the expense of such transportation shall be paid from the county poor fund of such county.

Sec. 249. Refusal to Obey] Any parent, guardian or custodian of any such deaf or blind child, who shall refuse or neglect to obey any order of any such county judge duly made as provided in this act shall be deemed guilty of a contempt of court and subject to the penalties thereof.

Sec. 250. Duty of Superintendents of Schools] It shall be the duty of every county, or city superintendent, of schools to send to the superintendent of the school for the blind at Gary, South Dakota, the names of all blind children of proper school age residing in his county or city; and to send to the superintendent of the school for the deaf at Sioux Falls, South Dakota the names of all deaf children of proper age, residing in his county or city, whenever the residence of such defective children within their jurisdiction becomes known to them, and the said superintendents for the respective institutions for the blind and deaf shall take all necessary action to provide that such defective children shall be given the advantages of proper education.

(H. B. 8, Session 1909)

Providing for the Instruction in Music

AN ACT Requiring Instruction of Vocal Music in the State Normals and Public Schools.

Be It Enacted by the Legislature of the State of South Dakota:

Sec. 252. (a) The elements of vocal music, including, when practical, singing of simple music by note, shall be taught in all public schools of South Dakota.

(b) Music shall be taught by instruction in all of the state normal schools and the minimum requirement of graduates from such schools must be at least two hours per week for one school year.

(c) In all graded schools the word "graded" is intended to mean all schools having two or more grades, instruction in music shall be given by an instructor qualified to teach the rudiments of music. The instructor may be a teacher of one of the departments who is qualified to teach this subject.

(d) In the country school conducted by a single teacher, the elements of music notation by vocal and blackboard drill in connection with the teaching of simple songs, shall be taught. But no teacher shall be refused a certificate or the grade of his certificate lowered on account of his lack of ability to instruct or sing.

(e) It shall be the duty of the county superintendent to have taught annually in the normal institute the elements of vocal music by some competent person for at least twenty minutes of each day. (Session Laws 1909.)

State Board of Regents of Education

Sec. 253. The control of the educational institutions of the state which are sustained, wholly or in part by the state, shall be vested in a board of five regents, appointed by the governor, by and with the consent of the senate, and whose term of office shall be for six years from and after the first day of January immediately proceeding the appointment and confirmation, and until his successor is duly qualified, unless sooner removed. All expiration of terms shall occur on the first day of January of each odd or legislative year, and all appointments for full term must be made before the first day of February of the regular biennial legislative year, and shall be so made to fill all vacancies on said board arising either by expiration of term or from any other cause whatsoever, except as is hereinafter provided. (Sec. 196, Pol. C.)

Sec 254. They shall be persons of probity and wisdom and selected from among the best and the best known citizens, residents of the different portions of the state, none of whom shall reside in the counties in which any of the state educational institutions are located, and shall be so selected from among the different political parties, of the state as exist at the time of making the appointments to such boards. (Sec. 197, Pol. C.)

Sec. 255. In case a regent of education shall die, resign, remove from the state, or for any other reason vacate his office or become permanently disqualified from performing its duties, the governor of the state shall fill the vacancy by suitable and prompt appointment, and such appointee shall be clothed with full authority as a regent, but his term of service shall cease and expire with the next legislative session, unless sooner confirmed by the senate. But the governor

shall not have power to fill any vacancies caused by the refusal of the senate to confirm, nor vacancies caused by his own neglect to nominate to the senate in time for confirmation. (Sec. 198, Pol. C.)

Sec. 256. Upon their appointment and confirmation they shall each take an oath of office before a proper officer to support the constitution of the United States and of this state, and to perform his duties as a regent of education to the best of his ability, before taking his seat as a regent, which said oath shall be filed in the office of the secretary of state. (Sec. 199, Pol. Co.)

Sec. 257. The regents of education shall hold two regular meetings each year, one to be known as the annual meeting and one as the semi-annual meeting, at such stated times as shall best subserve the interests of the institutions under their control. Extra meetings may also be held in case of weighty emergency, on the call of the president or by joint request of a majority of the members, due and reasonable notice always being given. Three regents shall constitute a quorum for doing business, but two may adjourn from day to day. (Sec. 200, Pol. C.)

Sec. 258. At the annual meeting of the board there shall be elected from among the members thereof a president, and they shall also elect a secretary, whose respective terms of office shall be for one year, and all elections, except to fill vacancies, shall be held at such annual meeting. (Sec. 201, Pol. C.)

Sec. 259. To facilitate their work, the regents of education shall have power to appoint of their own members such committees as seem desirable, but they shall appoint a standing committee of regents for each institution under their control, whose chairman may be charged by them and under their rules with certain executive duties in connection with the institution for which he was appointed, and which may need attention during the interim of board meetings. They are also empowered to employ a competent stenographer and bookkeeper. (Sec. 202, Pol. C.)

Sec. 260. The failure of any regent to attend two successive regular meetings as herein provided may be construed by the governor as a resignation and he may proceed to fill the vacancy unless such absences were on account of temporary disabling sickness or other equally valid reason accepted by the regents at their next meeting. (Sec. 203, Pol. C.)

Sec. 261. The regents of education shall become, and they and their successors in office shall continue to be a legal corporation, or body corporate, with power to sue and be sued, to hold and manage fully, for the purposes for which these educational institutions were established, any property belonging to said institutions, collectively or severally, of which they shall in any manner become possessed. (Sec. 204, Pol. C.)

Sec. 262. They shall have the power to make contracts for service, the erection of buildings, the purchase of all lands, materials and supplies needed; and in the carrying out of such contracts they shall have the power to expend moneys, to exact and collect penalties, and to purchase or sell property within the limitations of the state and national laws; provided, that all contracts for the erection and repairs of buildings, or for the purchase of fuel or other ordinary supplies exceeding in value two hundred dollars shall be by means of publicly advertised competing bids and public letting; and provided further, that no regent shall be directly or indirectly pecuniarily interested in such contract, and they may as a board bring suit in the proper court having jurisdiction, in the name of the regents of education, to enforce any contract made by them as such board, and may also bring suit in all matters relating to such property, or to the care, custody, control, management or improvement thereof, and it is hereby made the duty of the attorney general to prosecute any such suit upon the request of said board. Any moneys collected upon any judgment obtained under the provisions of this article shall be paid into the treasury for the benefit of the educational institutions, and credited to the proper fund or funds.

It being intended by this section to confer, and it does confer upon the regents of education all powers usually exercised by such boards and which are necessary to the proper legal management of the educational institutions placed under their control, and the property belonging to the same. (Sec. 205, Pol. C.)

Sec. 263. Any regent is authorized to administer oaths and examine witnesses whenever necessary in the performance of the duties of the board. (Sec. 206, Pol. C.)

Sec. 264. The regents of education in their capacity as a board and for the purpose of exercising proper control over those institutions of learning which are placed in their care, shall have full power to employ or dismiss all members of the faculties of instructions of said institutions, all assistants, foremen, secretaries, laborers or other agents necessary to the proper management of the institutions, to determine their number, their qualifications, define their duties, fix the period or term of their employment, and the rate and manner of their compensation; provided, that no person shall be employed or dismissed by reason of any sectarian or political opinions held. (Sec. 207, Pol. C.)

Sec. 265. The regents of education shall have full power, to authorize for the institution under their control such departments and courses of study as they may think best, to determine what textbooks shall be used, what requirements for the admission and graduation of students shall be maintained, what rules shall be enacted and enforced for the government of students, and said regents shall have

power to make all other rules and regulations for the wise and successful current management of the schools under their control. And, further, they are hereby empowered to delegate provisionally any of the authority given in this section to the presidents, deans, principals or faculties of instruction of said schools, as in the judgment of said regents may be proper or as may be in accordance with the usual custom in such cases. (Sec. 208, Pol. C.)

Sec. 266. They shall fix all rates of tuition and other fees to be paid by students, but such rates shall be the same in all the different institutions. They may receive in any one of the institutions under their control, free of tuition, two students appointed by each state senator, and one by each representative of the state legislature, which appointees shall be residents of their respective districts, or counties and whose terms shall expire with the term of office of said senator or representative; PROVIDED, that such appointees shall comply with all the rules and requirements of the institutions which they desire to enter. No student, however, shall receive any other gratuity whatever. (Sec. 209, Pol. C.)

A senator may make only two appointments and a representative only one during their term of two years. Opinion by Philo Hall, Attorney General.

Sec. 267. All persons, and the orphans of such persons residing in this state, who served sixty days or more in the army or navy of the United States during our late war against Spain and who have been honorably discharged from such service, shall be admitted to attend any state institution of this state during good behavior, and shall be required to pay no tuition for such privilege; PROVIDED, that they shall be subject to the rules and requirements governing such schools as they may desire to attend. (Sec. 210, Pol. C.)

Sec. 268. The regents of education are hereby expressly forbidden to continue or to create chairs, departments, laboratories, libraries, or other equipment in multiplication, except where the obvious needs of the special work of the schools make such multiplication necessary. In all things the regents are to administer the schools in such a manner as to enable each one of them to do in the best manner its own specific work, but all with a view to the strictest economy, and so as to unify and harmonize the entire work of all the schools under their control. (Sec. 211, Pol. C.)

Sec. 269. The regents of education are authorized to confer all scholastic honors and degrees usually granted by such boards; but all degrees, diplomas and certificates of graduation shall be issued and conferred in their name and by their express authority. In conferring degrees the regents shall conform as nearly as may be to the best and most reputable current practice in such matters. Students shall be

graduated from any one of these institutions by the regents of education upon recommendation of the appropriate faculty of that institution. A certificate of graduation from a full course in any one of the normal schools or from the state university, provided the graduate of the university has taken a course in pedagogy as given in that institution, shall be a license valid for five years to teach in any of the public schools of this state. (Sec. 212 Pol. C.)

The board of regents must confer appropriate scholastic degrees upon graduates of the South Dakota Agricultural College who have completed a full course in a satisfactory manner. Opinion by W. H. Roddle, Assistant Attorney General.

Sec. 270. The United States agricultural experiment station for South Dakota being by national law a department of, and under the direction of, the agricultural college, shall be under the exclusive control of the regents of education, just as other departments and institutions are under their control. (Sec. 213, Pol. C.)

Sec. 271. The regents of education are authorized to encourage and provide for farmers' institutes to be conducted by members of the agricultural college faculty, or by any one else designated by said regents; and the said regents are likewise authorized to encourage and as far as possible provide for any other form of university extension work which is feasible and of value to the people. (Sec. 214, Pol. C.)

Sec. 272. The regents of education shall cause to be made as soon as practicable surveys of the geology, natural history, and physical features of the state which surveys shall be carried on with the view of a complete account of the mineral, vegetable and animal kingdoms, as represented in the state, together with its physical features, including the several geological strata, ores, soils, clays, coals, peats, artesian and other waters, marls, building and other stones and cements and other useful minerals and materials, scientific analysis of said material and report upon their economic value and accessibility, and further including tests by drilling, digging or other excavation for the discovery of water, iron, silver, gold, copper, coal, gas, salt or other valuable mineral or other material that may from said surveys, appear likely to exist in the state. Said surveys shall further have in view a complete and scientific account of the vegetable and mineral kingdoms of the state, including all native and naturalized grasses, herbs, plants, shrubs and trees, insects, birds reptiles, fishes and mammalia. (Sec. 215, Pol. C.)

Sec. 273. They shall cause a geological map of the state to be made as soon as may be practicable, upon which the various geological formations shall be represented, and shall also cause to be ascertained by barometrical and other observations, the elevations and depressions of different parts of the state; cause to be tabulated such

meteorological and other observations, and statistics as may be required to account for the variety of climate and products of the various parts of the state; and cause to be compiled, as soon as practicable an accurate geographical, physical and topographical map or maps of the state. (Sec. 216, Pol. C.)

Sec. 274. The said regents of education shall cause suitable specimens, properly prepared secured and labeled, of all soils, rocks, ores, coals, peats fossils, cements, building and other stones, plants, woods, skins, and skeletons of animals, birds, insects and fishes, and other mineral, vegetable and animal substances and organisms discovered or examined in the course of said surveys together with reports upon all chemical or other scientific analysis made in connection with said surveys and the results of all meteorological, barometrical and other observations and statistics, to be preserved for public inspection and whenever the same may seem to be practicable cause duplicates in reasonable numbers and quantities of said specimens, reports and results, to be collected and preserved for the purpose of exchange with educational, scientific or other institutions, of which the Smithsonian Institute at Washington, in the District of Columbia, shall have the preference; and for the purpose of such donations to educational and scientific institutions of the state, as shall by the said regents of education be deemed proper. (Sec. 217 Pol. C.)

Sec. 275. No person appointed or employed to carry out the provisions of the three preceding sections shall incur any expenses or make known the results of his investigations, except as authorized by the said regents of education. All persons so appointed or employed shall immediately report to the said regents of education all discoveries of economic or scientific interest to the state in general and shall make, on or before the first of November next preceding each regular session of the legislature, a complete report of the progress of said discovery, accompanied by such maps, drawings, tables and other specifications and exhibits as may be proper and necessary to exemplify the same, and it shall be the duty of said regents of education on or before the fifteenth day of November next preceding each regular regular session of the legislature, to submit the aforesaid report of reports to the governor, who shall lay the same before the legislature, and the said regents of education, upon the completion of any separate portion or department of the said surveys, shall cause to be prepared a report which shall embody all useful and important information accumulated in the investigation of said portion or department, which report shall likewise be conveyed through the governor to the legislature. (Sec. 218, Pol. C.)

Sec. 276. The state treasurer shall be the treasurer of the regents of education, and he shall perform all the duties of such office, subject to such regulations as they may adopt, not inconsistent with his other official duties, and he and his sureties shall be liable on his official bond for the faithful discharge of such duties. Said treasurer shall have authority to receive and receipt for all moneys arising from any source for the use of any of the educational institutions under the control of the said regents, and he shall keep such separate accounts of the several funds as they shall prescribe. All moneys received from rents of dormitories, tuition or other fees authorized by the regents of education, or from articles, products or materials sold by their authority, shall be collected by some person designated by said regents for each institution to make such collections, under proper bonds, and said person shall transmit to the state treasurer at the close of each calendar month all moneys thus received by him during that month; and no other person shall be permitted to collect or hold any money belonging to said institutions. Moneys received from the national government, under any of the various grants, shall be payable to the state treasurer, as treasurer of the regents of education, and shall be receipted for by him. All moneys received as interest on the national land grant funds or from leases of the land granted to these institutions under the control of the regents of education, shall be paid to the state treasurer, and shall be credited by him to the proper educational institutions. At once on receiving moneys from any source the state treasurer shall notify the secretary of the regents of education of the amount, the source from which received, and the fund to which credited. (Sec. 219, Pol. C.)

Sec. 277. There is annually and perpetually appropriated to the regents of education for the exclusive and legal use of the educational institutions under their control all moneys received from their endowment land grant as interest or rent, all local collections from fees of any kind, or from rents or sales authorized, all United States money grants of any kind, all moneys derived from any source to be used by the regents of education for the proper and legal maintenance of the institutions under their control. (Sec. 220, Pol. C.)

Sec. 278. No expenditures shall be made except by express authority of the regents of education first obtained, and no indebtedness shall be permitted or incurred except against funds already available for such purpose, and no expenditure from any fund shall, under any circumstances, be made except for the legal purpose for which said fund exists and for the institution to which it belongs. The method in detail of making expenditures, purchases, etc., except so far as they are specified by this article, shall be left to the discretion of the regents of education. (Sec. 221, Pol. C.)

Sec. 279. Whenever a properly audited and authenticated voucher of the regents of education is presented to the auditor of state it shall be his duty to transmit promptly to the office of the secretary of the regents of education his warrant for a corresponding sum on the state treasurer, unless said voucher shall overdraw the fund from which it is made payable. (Sec. 222, Pol. C.)

Sec. 280. The regents of education shall each receive an annual salary of one thousand dollars, and their actual and necessary expenses while engaged in the performance of their official duties. (Chap 197, Laws of 1903.)

Sec. 281. In the general appropriation for state purposes the sum of one thousand five hundred dollars, or so much thereof as may be needed, shall be provided each year for the expense of the regents of education.. Said general appropriation shall also provide one thousand dollars each year for the salary of the secretary and stenographer of the regents of education, and actual and necessary expenses and disbursements of said secretary. (Chap. 197, Laws 1903.)

Sec. 282. The regents of education shall on or before the thirtieth day of October previous to each biennial session of the legislature prepare and present to the governor of the state for his use and for the use of the legislature, a full detailed report of all their doings for the preceding two years, with a statement of the work and the condition financially and educationally of all the institutions under their control, with such recommendations as they may desire to make, and with detailed estimates for legislative aid, if in their judgment any is needed. They shall also by themselves or their authorized representative, attend upon the session of the legislature whenever required so to do by a committee or either house. They shall also prepare, or cause to be prepared and transmitted at proper times, all reports required of them by the United States laws. (Sec. 225, Pol. C.)

CHARITABLE AND EDUCATIONAL INSTITUTIONS

School for Deaf Mutes

Sec. 350. The state school for deaf mutes, as heretofore established and located on the southwest quarter of section number fifteen, in township number one hundred and one north, of range forty-nine west, in the county of Minnehaha, and within the corporate limits of the city of Sioux Falls, in this state, shall continue as such school and shall be under the charge and control of the state board of charities and corrections. (Sec. 565, Pol. C.)

Sec. 351. It shall be the duty of the said board to continue and maintain said school for the education of the deaf and dumb, and to afford that unfortunate class so far as possible, enlightened and practical education that may aid them to obtain the means of subsistence,

discharge the duties of citizens, and secure all the happiness which they are capable of obtaining. (Sec. 566, Pol. C.)

Sec. 352. It shall also be the duty of said board:

1. To preserve and care for the buildings, grounds, and all the property belonging to the school.

2. To employ a superintendent and matron, both of whom shall be skilled in the use of the sign language, and capable and efficient in the instruction, management and care of the deaf and dumb; and the matron shall not be the wife of the superintendent or any teacher or officer of the school: to prescribe the duties of the superintendent and matron, and to fix their compensation, not to exceed one thousand, five hundred dollars per annum for the superintendent, and not to exceed six hundred dollars per annum for the matron; and said board shall have power to employ such other teachers, assistants, watchmen and servants as the proper conduct and efficient management of said school may require, and to fix the compensation for the same.

3. To prescribe such charges for board, tuition and care of pupils received from without the state as will be sufficient, at least, to pay all expenses thereof, and collect all such charges fixed by them.

4. To faithfully apply all funds, effects and property which may be received for the use and benefit of the school.

5. To report to the governor biennially on or before the thirtieth day of October preceding the meeting of each regular session of the legislature, which report shall contain an account of the school during the period of the two years preceding, and all matters of interest connected therewith, and a detailed statement of all receipts and disbursements of funds during such years, and of all funds in their charge.

6. To fix the period of the academic year of said school, which period shall not be less than forty weeks. (Sec. 567, Pol. C.)

Sec. 353. All deaf and dumb persons, residents of this state, over six years of age and under twenty-one years of age, capable of receiving instruction, free from contagious or chronic diseases, shall be received and taught free of charge. Like pupils may be received from without the state upon payment to the superintendent, for the use and benefit of the school, of such charges for board, tuition and care, as shall be fixed by the state board of charities and corrections, but no pupil from without the state shall ever be received to the exclusion of any pupil resident within the state from any of the privileges or benefits of the school. All pupils shall freely and equally enjoy all the benefits and privileges of the school, and have the use of the library and books of tuition, and receive board, washing, lodging, attendance, medical care, fuel, etc., etc., without preference or distinction. And all pupils shall be treated with the most considerate regard for their misfortune, and always with kindness and humanity, and the board shall carefully enforce this provision. (Sec. 568, Pol. C.)

The University of South Dakota

Sec. 354. The university of South Dakota as established and located at Vermillion, in the county of Clay, shall continue to be the university of the state, the control of which shall be vested in the state board of regents. (Sec. 575, Pol. C.)

Sec. 355. The object of the university of South Dakota established by an act of the legislative assembly of the Territory of Dakota entitled "An Act to Locate the University of the Territory of Dakota," approved April 21, A. D. 1862, shall be to provide the best and most efficient means of imparting to young men and women on equal terms a liberal education and thorough knowledge of the different branches of literature, the art and sciences, with their varied applications. (Sec. 576, Po. C.)

Sec. 356. The university, so far as practicable, shall begin the courses of study in its collegiate and scientific departments at the points where the same are completed in high schools; and no student shall be admitted who has not previously completed the elementary studies in such branches as are taught in the common schools throughout the state. No student who shall have been a resident of the state one year next preceding his admission, shall be required to pay any fees for tuition in the university, except in the law department and for extra studies. The board of regents may prescribe rates of tuition for any pupil in the law department or who shall not have been a resident of the state as aforesaid, and for teaching extra studies. (Sec. 577, Pol. C.)

Sec. 357. The university shall never be under the exclusive control of any religious denomination whatever, and no instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of the university. (Sec. 578, Pol. C.)

Sec. 358. The university shall include a collegiate, scientific, law, normal, and such other departments and have such other courses of instruction and elective studies as the board of regents may determine; and the board shall have authority to confer such degrees and grant such diplomas and other marks of distinction as are usually conferred and granted by other universities. The board are authorized to employ such instructors and lectures for the law department of the university as the needs of the department may require, and to procure a suitable library for the same. (Sec. 579, Pol. C.)

Sec. 359. The board of regents shall enact rules for the government of the university and shall appoint a president and a requisite number of professors and tutors, together with such other officers as they may deem expedient, and shall determine and fix the salaries of such officers. They shall remove any officer connected with the university when in their judgment the good of the institution requires it. (Sec. 580, Pol. C.)

Sec. 360. The board of regents is authorized to expend such sums of money as may be appropriated for the university funds as it may deem expedient in the purchase of apparatus, library and a cabinet of natural history, in providing suitable means to keep and preserve the same, and in procuring all other necessary facilities for giving instruction. (Sec. 581, Pol. C.)

Sec. 361. All specimens of natural history and geology and mineralogical specimens which are or hereafter may be collected by the state geologist or by any others appointed by the state to investigate its natural and physical resources, or donated by any person, shall belong to and be the property of the university and shall form a part of its cabinet of natural history, which shall be under the charge of the professor of that department. (Sec. 582, Pol. C.)

Sec. 362. The president of the university shall make a report on the 15th day of September preceding the meeting of the legislature, to the board of regents, which shall exhibit the condition and progress of the institution in its several departments, the different courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes and residences, and such other matters as he may deem proper to communicate. (Sec. 583, Pol. C.)

Sec. 363. The board of regents shall on or before the 30th day of October in each year preceding the regular meeting of the legislature, make a report to the governor in which report the report of the president of the university shall be embodied, and which report shall contain the number of professors, tutors and other officers, with the compensation of each, the condition of the university fund, and the income received therefrom, the amount of expenditures and the items thereof, with such other information and recommendations as they may deem expedient to lay before the legislature. (Sec. 584, Pol. C.)

The Agricultural College and Experimental Station

Sec. 364. Name Changed] The name of the Agricultural college located at Brookings, South Dakota, shall hereafter be "State College of Agriculture and Mechanic Arts." (Session Laws 1907.)

Sec. 365. The agricultural college of South Dakota and experimental station, as now located and established at Brookings in the county of Brookings, in this state, shall continue as such and shall be under the control and supervision of the state board of regents. (Sec. 585, Pol. C.)

Sec. 366. The design of this institution is to afford practical instruction in agricultural and the natural sciences connected therewith, and also the sciences which bear directly upon all industrial arts and pursuits. The course of instruction shall embrace the English lan-

guage and literature, mathematics, civil engineering, agricultural chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology and such other natural sciences as may be prescribed, political, rural and household economy, horticulture, moral philosophy, history, bookkeeping and especially the application of science and the mechanic arts to practical agriculture in the field. (Sec. 586, Pol. C.)

Sec. 367. The board of regents shall have power to employ a president and necessary teachers, instructors and assistants to conduct the said school and to carry on the experimental farm in connection therewith, and they shall have supervision and charge of the construction of all buildings provided for by law for the said college and farm. (Sec. 587, Pol. C.)

Sec. 368. A full course of study in the institution shall embrace not less than four years, and the college year shall consist of not less than nine calendar months, which may be divided into terms by the board of regents as in their judgment will best secure the objects for which the college was founded. (Sec. 588, Pol. C.)

Sec. 369. The board of regents shall fix the salaries of the president, teachers, instructors and other employes, and prescribe their respective duties. The board may remove the president or subordinate officers and supply all vacancies. (Sec. 589, Pol. C.)

Sec. 370. The faculty shall consist of the president, teachers and instructors, and shall pass all needful rules and regulations for the government and discipline of the college, regulating the routine of labor, study, meals and the duties and exercises, and all such rules and regulations as are necessary for the preservation of morals, decorum and health. (Sec. 590, Pol. C.)

Sec. 371. The president shall be chief executive officer of the agricultural college, and it shall be his duty to see that all rules and regulations are executed, and the subordinate officers and employes not members of the faculty shall be under his direction and supervision. (Sec. 591, Pol. C.)

Sec. 372. The president of the college and the president of the board of regents shall constitute a committee to fix the rate of wages to be allowed to students for labor on the farm or in the shops or kitchen of the agricultural college. (Sec. 592, Pol. C.)

Sec. 373. The faculty shall make an annual report to the board of regents on or before the fifteenth day of November of each year, showing the condition of the school and farm and the results of farm experiments, and containing such recommendations as the welfare of the institution in their opinion demands. (Sec. 593, Pol. C.)

Sec. 374. The agricultural experimental station in connection with the agricultural college of South Dakota for the purpose of conducting experiments in agriculture, according to the terms of section 1 of an Act of Congress, approved March 3, 1887, and entitled "An Act to Establish Agricultural Experiment Stations in Connection with the Colleges Established in the Several States, Under the Provisions of an Act Approved July 2, 1862, and of the Acts Supplementary Thereto," heretofore established, shall continue as such and be and remain under the exclusive control of the board of regents. (Sec. 594, Pol. C.)

Sec. 375. The sub-experimental station, now established and located within one-half mile of Highmore, in this state, for the purpose of carrying on experiments with drouth-resisting forage plants suitable for the dry range regions of Middle South Dakota, shall continue as such. (Sec. 595, Pol. C.)

Sec. 376. It shall be under the control of the state board of regents in connection with the South Dakota agricultural college, and the line of experiment to be made shall be confined solely to the investigation of the various kinds of drouth-resisting forage plants, and no irrigation shall be employed. (Sec. 596, Pol. C.)

Sec. 377. The land required for the plats, and any building needed by said sub-experimental station, shall be furnished to the state rent free by the citizens of the locality in which the said station shall be located. The state shall acquire no title or interest in such lands or building except the absolute control of the same and of the forage produced so long as the proposed experiments are in progress. The regents shall exact a lease for not less than two years, with the privilege of continuing the same an additional two years at their option, of the land and building before any work shall be commenced upon said land, and neither the lease or the land shall be subject to sale or transfer during the time the experiments are in progress. (Sec. 597, Pol. C.)

Sec. 378. The sum of six hundred dollars, or as much thereof as may be necessary, shall be appropriated annually by the regents from the funds paid by the general government to the state of South Dakota for the maintenance of the agricultural experiment station, for the support of the said sub-experiment station provided for in section 595. All moneys thus appropriated shall be expended and accounted for by the regents as all other moneys are expended and accounted for under the rules and the laws governing such expenditures. (Sec. 598, Pol. C.)

Sec. 378a. Normal Schools] The normal school, as established and located at Madison, in the county of Lake, and the normal school, as established and located at Spearfish in the county of Lawrence, and

the normal school as established and located at Springfield, in the county of Bon Homme, shall continue to be the normal schools of the state, the control of which is vested in the state board of regents. (Sec. 599, Pol. C.)

Sec. 378b. The object and exclusive purpose of such normal schools shall be the instruction of persons both male and female, in the art of teaching and in all the various branches that pertain to a good common school education; also to give instruction in the mechanical arts and in husbandry and in agricultural chemistry, in the fundamental laws of the United States, and in what regards the rights and duties of citizens. (Sec. 600, Pol. C.)

Sec. 378c. Any person may be admitted as a pupil of said normal school who shall pass a satisfactory examination; Provided, that the applicant shall before admission sign a declaration of intention to follow the business of teaching schools in this state; and, provided, further, that the pupils may be admitted without signing such declaration of intention on such terms as the board of regents may require or prescribe; and each county shall be entitled to send pupils in the ratio of the representation in the legislature to which it may be entitled, not to exceed such number as the board may prescribe. (Sec. 61, Pol. C.)

Sec. 378d. As soon as any person has attended any one of such institutions twenty-two weeks said person may be examined in the studies required by the board, in such manner as may be prescribed by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate. (Sec. 602, Pol. C.)

Sec 378e. The board of regents in their regulations, and the principals in their supervision and government of the schools, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance in the same; but no religious or sectarian tests shall be applied in the selection of teachers, and none shall be adopted in the school. (Sec. 603, Pol. C.)

Northern Normal and Industrial School

Sec. 379. The Northern Normal and Industrial School heretofore established and located at the city of Aberdeen, in the county of Brown, shall continue as such school. (Sec. 604, Pol. C.)

Sec. 380. The object and purpose of said school shall be to give instruction to persons of both sexes in manual training and the science and art of teaching, and also in the industrial and mechanical trades, arts and sciences, and the allied branches of learning. (Sec. 605, Pol. C.)

School of Mines

Sec. 381. The School of Mines, heretofore located and established at Rapid City, in Pennington county, shall continue as such. (Sec. 606, Pol. C.)

Sec. 382. It shall be the object of such School of Mines to furnish facilities for the education of such persons as may desire to receive special instruction in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, drawing, the fundamental laws of the United States and the rights and duties of citizens. (Sec. 607, Pol. C.)

Sec. 383. The said school of Mines shall be a place for instruction without charge to all bona fide residents of this state, without regard to sex or color, and with the consent of the board of regents of this state students from other states or territories may be admitted thereto upon such terms and upon such rates for tuition as the board may prescribe. (Sec. 608, Pol. C.)

Sec. 384. The board of regents shall have power to appoint a dean and such other instructors and officers as may be required, and fix the salary of each, and prescribe their several duties. They shall also have the power to remove the said dean and any and all of said instructors and officers and appoint others in their stead. They shall prescribe the books of instruction to be used in said School of Mines, and shall make all the rules, regulations and by-laws necessary for the good government and management of the same. (Sec. 609, Pol. C.)

Sec. 385. It shall be lawful for the dean of the said School of Mines to charge and collect such reasonable fees for any and all assays, analysis or mill tests made at the School of Mines as the said board may prescribe, an account of which shall be kept by said dean and paid over monthly to the state treasurer, to be placed to the credit of the School of Mines fund. (Sec. 610, Pol. C.)

Sec. 386. The school of Mines fund shall be used solely for the support of the School of Mines, and for no other purpose whatever (Sec. 611, Pol. C.)

Assessment and Taxation

Sec. 387. Property Exempt from Taxation]. All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:

First. The grounds, buildings and all property belonging to or used exclusively by agricultural and horticultural societies.

Second. All property, both real and personal, belonging to any educational institution in this state, and all property used exclusively by and for the esupport of such school and scientific institution.

Third. All property belonging to any charitable, benevolent or religious society, or used exclusively for charitable, benevolent or religious purposes.

Fourth. One lot in a cemetery for family use.

Fifth. The personal property of each individual liable to assessment and taxation under the provisions of this chapter of which such individual is the actual and bona fide owner, to the amount of not exceeding twenty-five dollars in value in household furniture and provisions; Provided, that each person shall list all his personal property for taxation, and the county auditor shall deduct, after county equalization, the amount of the exemption authorized by this section from the total amount of his assessment, and levy taxes upon the remainder. (Sec. 2056, Pol. C.)

Rate or Taxation and Levy

Sec. 388. Sixth. The county commissioners of each county also may levy a tax of one dollar on each elector in the county for the support of the common schols, and no property shall be exempt from the collection of such tax by distress or otherwise, which taxes when so collected shall be distributed to the several school corporations, in the county in proportion to the number of children resident in the territory of each, from six to twenty years of age, inclusive. (Sec. 2137, Pol. C.)

POLICE POWERS OF THE STATE

Article 6. Intoxicating Liquors

Sec 389. No person, firm or corporation shall engage in the business or calling of selling intoxicating liquors in the same block with or in any block adjacent to, any public or private school, or within two hundred feet of any church. (Sec. 2859, Pol. C.)

Assault and Battery

Sec. 390. An assault is any wilful and unlawful attempt or offer, with force or violence, to do corporal hurt to another. (Sec. 310, Penal C.)

Sec. 391. A battery is any wilful and unlawful use of force or violence upon the person of another. (Sec. 311, Penal C.)

Sec. 392. To use or to attempt to offer to use force or violence upon or toward the person of another is not unlawful in the following cases:

- | | | | | | | | |
|----|---|---|---|---|---|---|---|
| 1. | * | * | * | * | * | * | * |
| 2. | * | * | * | * | * | * | * |
| 3. | * | * | * | * | * | * | * |

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, provided restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent, or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree. (Sec. 312, Penal C.)

Gaming

Sec. 393. Every person who exacts or receives from another, directly or indirectly, any valuable consideration, by reason of the same having been won by playing at cards, faro, or any other game at chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the consideration so exacted or received, to be recovered in a civil action, by the county superintendent of schools of the county in which the offense was committed, for the benefit of common schools in said county. (Sec. 398, Penal C., as amended by laws of 1907.)

Of Crimes Against Revenue and Property of the State

Sec. 394. Any person or persons who shall commit wilful waste or depredation on any school, public or endowment lands of this state or who shall break up or attempt to cultivate any part of said lands or who shall remove or attempt to remove from such lands any stone or any other valuable thing naturally a product of or an appurtenance thereto shall be deemed guilty of a misdemeanor; provided that it shall not be deemed a trespass under the provisions of this act to cultivate any of such lands which have been broken and cultivated prior to the passage of this act if a lease has been obtained by authority of the commissioner of school and public lands permitting the lessee to use the same for agricultural purposes; and any person or persons who shall deliberately and wilfully attempt to use any part of said land for meadow or pasturage purposes or who shall wilfully remove or attempt to remove therefrom any hay without first having obtained a lease therefor in the manner provided by law shall be deemed guilty of a misdemeanor. Any person convicted of a violation of the provisions of this section shall be punished by a fine of not less than twenty-five dollars or more than one hundred dollars, or imprisonment in the county jail for a period of thirty days, or both, in the

judgment of the court, and any justice of the peace within the county where such offense shall be committed, shall have jurisdiction to try and determine all cases arising under the provisions of this section. (Sec. 538, Penal C.)

Sec. 395. Any person or persons who shall cut, remove or attempt to remove any timber or wood standing or growing on said school, public and endowment lands shall, on conviction be punished by a fine of not less than \$250 or more than \$500, or by imprisonment in the penitentiary for not less than six months nor more than one year, or both, in the discretion of the court. All fines recorded under the provision of this act shall be paid into the county treasury of the proper county and placed to the credit of the interest and income fund of the class to which such lands belong. (Sec. 539, Penal C.)

Lack of knowledge that the land from which timber is removed is school land does not lessen the offence. *State v. Dorman*, 9 S. D. 528.

Sec. 396. Any person or persons who shall violate any of the provisions of the two preceding sections shall, in addition to the criminal action herein provided for be liable to civil suits for damages resulting from their act or acts. Such suits may be brought in any competent tribunal in the name of the State of South Dakota, to recover damages for such violations. All moneys recovered as a result of such actions shall be paid into the county treasury of the proper county and placed to the credit of the permanent fund of the class to which said lands belong. Moneys received by county treasurers under the provisions of this act shall be accounted for and remitted to the state treasurer upon drafts drawn by the commissioner of school and public lands in the same manner as other school funds. (Sec. 540, Penal C.)

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS

Exemptions

Sec. 397. Except as hereinafter provided, the property mentioned under this heading, is exempt from attachment or mesne process, and from levy and sale on execution, and from any other final process, and from levy and sale on execution, and from any other final process issued from any court. (Sec. 344, Civ. Proc.)

Sec. 398. The property mentioned in this section is absolutely exempt from all such process, levy or sale, except as otherwise provided by law:

1st.	*	*	*	*	*	*	*
2d.	*	*	*	*	*	*	*
3d.	*	*	*	*	*	*	*

4th. The family bible and all school books used by the family and all other books used as a part of the family library not exceeding in value two hundred dollars. (Sec. 345, Civ. Proc.)

Constitutional Provisions

Sec. 399. There shall be chosen by the qualified electors of the state at the time and places of choosing members of the legislature, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands, and an attorney general, who shall severally hold their offices for the term of two years, but no person shall be eligible to the office of treasurer for more than two terms consecutively. They shall respectively keep their offices at the seat of government. (Sec. 12 of Article IV, Const.)

Sec. 400. The powers and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands and attorney general shall be as prescribed by law. (Sec. 13 of Article IV, Const.)

Sec. 401. Any woman having the qualifications enumerated in section 1 of this article as to age, residence and citizenship and including those now qualified by the laws of the territory may vote at any election held solely for school purposes and may hold any office in this state except as otherwise provided in this constitution. (Sec. 9 of Article VII, Const.)

Women are entitled to vote at a bond election. Opinion by Philo Hall, Attorney General.

Women may vote at an election held for the purpose of determining the question of the removal of a school house. Opinion by W. H. Roddle, Assistant Attorney General.

Education and School Lands

Sec. 402. The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all, and to adopt all suitable means to secure to the people the advantages and opportunities of education. Sec. 1 of Article VIII. (Const.)

The owner of a farm who resides upon and works it in the summer, but removes to a distant city during the winter for the purpose of giving his family social and school privileges, and resides there in a rented house which he gives up each spring upon his return to the farm, and who has no permanent business in the city during the winter, and who has voted at both places is not entitled to the school privileges of a resident of the city. Gardner v. Fargo Bd. of Edu., 5 Dak. 259.

Sec. 403. All proceeds of the sale of public lands that have heretofore been or many hereafter be given by the United States for the use of public schools in the state; all such per centum as may be granted by the United States on the sales of public lands; the proceeds of all property that shall fall to the state by escheat; the proceeds of all gifts or donations to the state for public schools or not otherwise appropriated by the terms of the gift; and all property otherwise acquired for public schools, shall be and remain a perpetual fund for the maintenance of public schools in the state. It shall be

deemed a trust fund held by the state. The principal shall forever remain inviolate, and may be increased, but shall never be diminished, and the state shall make good all losses thereof, which may in any manner occur. (Sec. 2 of Article VIII, Const.)

Sec. 404. The interest and income of this fund, together with the net proceeds of all fines for violation of state laws, and all other sums which may be added thereto by law shall be faithfully used and applied each year for the benefit of the public schools of the state, and shall be for this purpose apportioned among and between all the several public school corporations of the state in proportion to the number of children in each, of school age, as may be fixed by law; and no part of the fund, either principal or interest, shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatsoever than the maintenance of public schools for the equal benefit of all the people of the state. (Sec. 3 of Article VII, Const.)

Sec. 405. After one year from the assembling of the first legislature, the lands granted to the state by the United States for the use of public schools may be sold upon the following conditions and no other; not more than one-third of all such lands shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the state, and the legislature shall, subject to the provisions of this article, provide for the sale of the same. (Sec. 4 of Article VIII, Cost.)

The commissioner of school and public lands, the state auditor and the county superintendent of schools of the counties severally, shall constitute boards of appraisal and shall appraise all school lands within the several counties which they may from time to time select and designate for sale, at their actual value under the terms of sale.

They shall take care to first select and designate for sale the most valuable lands and they shall ascertain all such lands as may be of special and peculiar value, other than agricultural, and cause the proper subdivision of the same in order that the largest price may be obtained therefor.

Sec. 406. No land shall be sold for less than the appraised value, and in no case for less than ten dollars an acre. The purchaser shall pay one-fourth of the price in cash and the remaining three fourths as follows: one-fourth in five years, one-fourth in ten years and one-fourth in fifteen years, with interest thereon at the rate of not less than six per centum per annum payable annually in advance; but all such subdivided lands may be sold for cash provided that upon payment of the interest for one full year in advance, the balance of the purchase price may be paid at any time. All sales shall be at public auction to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall

not have been specially subdivided shall be offered in tracts of not more than eighty acres and those so subdivided in the smallest subdivision. All lands designated for sale and not sold within four years after appraisal, shall be reappraised by the board of appraisal as hereinbefore provided before they are sold. (Sec. 5 of Article VII, Const.)

Interest in school lands after first payment is subject to execution. *Brook v. Eastman*, 17 S. D. 339.

Sec. 407. All sales shall be conducted through the office of the commissioner of school and public lands as may be prescribed by law and returns of all appraisals and sales shall be made to said office. No sale shall operate to convey any right or title to any lands for sixty days after the date thereof, nor until the same shall have received the approval of the governor in such form as may be provided by law. No grant or patent for any such lands shall issue until final payment be made. (Sec. 6 of Article VIII, Const.)

Sec. 408. All lands, money or other property donated, granted or received from the United States or any other source for a university, agricultural college, normal schools or other educational or charitable institution or purpose, and the proceeds of all such land and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rent of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the state, and the state shall make good all losses therefrom that shall in any manner occur. (Sec. 7 of Article VIII, Const.)

Sec. 409. All lands mentioned in the preceding section shall be appraised and sold in the same manner and by the same officers and boards under the same limitations and subject to all the conditions as to price, sale and approval, provided above for the appraisal and sale of lands for the benefit of public schools, but a distinct and separate account shall be kept by the proper officers of each of such funds. (Sec. 8 of Article VIII, Const.)

Sec. 410. The lands mentioned in this Article shall be leased for pasturage, meadow, farming, the growing of crops of grain and general agricultural purposes, and at public auction, after notice as hereinbefore provided in case of sale and shall be offered in tracts not greater than one section. All rents shall be payable annually in advance, and no term of lease shall exceed five years, nor shall any lease be valid until it receives the approval of the governor. (Sec. 9 of Article VII, Const. (as amended by election in 1910.))

Sec. 411. No claim to any public lands by any trespasser thereon by reason of occupancy, cultivation or improvement thereof, shall ever

be recognized; nor shall compensation ever be made on account of any improvements made by such trespasser. (Sec. 10 of Article VIII, Const.)

Sec. 412. The moneys of the permanent school and other educational funds shall be invested only in first mortgages upon good improved farm lands within this state as hereinafter provided, or in bonds of school corporations within the state, or in bonds of the United States, or of the state of South Dakota. The legislature shall provide by law the method of determining the amounts of said funds which shall be invested from time to time in such class of securities respectively, taking care to secure continuous investments as far as possible.

All moneys of said funds which may from time to time be designated for investment in farm mortgages and in the bonds of school corporations, or in bonds of organized counties, townships, or incorporated cities, within this state shall for such purpose be divided among the organized counties of the state in proportion to population as nearly as provisions by law to secure continuous investments may permit. The several counties shall hold and manage the same as trust funds, and they shall be and remain responsible and accountable for the principal and interest of all such moneys received by them from the date of receipt until returned because not loaned and in case of loss of any money so apportioned to any county, such county shall make the same good out of its common revenue. Counties shall invest said money in bonds of school corporations, counties, township or cities or in first mortgages upon good improved farm lands within their limits respectively. The amount of each loan shall not exceed one-third the actual value of the lands covered by the mortgage given to secure the same, such value to be determined by the board of county commissioners of the county in which the land is situated and in no case shall more than five thousand (\$5000) dollars be loaned to any one person firm or corporation, and the rate of interest shall not be less than five per centum per annum, and shall be such other and higher rate as the legislature may provide, and shall be payable semi-annually on the first day of January and July; Provided, that whenever there are moneys of said fund in any county amounting to one thousand dollars that cannot be loaned according to the provisions of this section and any law pursuant thereto, the said sum may be returned to the state treasurer to be intrusted to some other county or counties or otherwise invested under the provisions of this section.

Each county shall semi-annually, on the first day of January and July, render an account of the condition of the fund intrusted to it to the auditor of state, and at the same time pay to or account to the state treasurer for the interest due on all funds intrusted to it.

The legislature may provide by general law that counties may retain from interests collected in excess of five per centum per annum

upon all said funds intrusted to them, not to exceed one per centum per annum. But no county shall be exempted from the obligation to make semi-annual payments to the state treasury of interests at the rate provided by law for such loans, except only said one per centum; and in no case shall the interest so to be paid be less than five per centum per annum.

The legislature shall provide by law for the safe investment of the permanent school and other educational funds, and for the prompt collection of interest and income thereof, and to carry out the object and provisions of this section.

Sec. 413. The governor may disapprove any sale, lease or investment other than such as are intrusted to the counties. (Sec. 12 of Article VIII, Const.)

Sec. 414. All losses to the permanent school or other educational fund of this state which shall have been occasioned by the defalcation, negligence, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the fund sustaining the loss upon which not less than six per centum of annual interests shall be paid. The amount of indebtedness so created shall not be counted as a part of the indebtedness mentioned in Article XIII, Sec. 2. (Sec. 13 of Article VIII, Const.)

Sec. 415. The legislature shall provide by law for the protection of the school lands from trespass or unlawful appropriation, and for their defense against all unauthorized claims or efforts to divert them from the school fund. (Sec. 14 of Article VIII, Const.)

Sec. 416. The legislature shall make such provision by general taxation, and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state. (Sec. 15 of Article VIII, Const.)

Sec. 417. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state. (Sec. 16 of Article VIII, Const.)

Synod of Dakota v. State, 2 S. D. 366.

Sec. 418. No teacher, state, county, township or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used or to be used in any school in this state, under such penalties as shall be provided by law. (Sec. 17 of Article VIII, Const.)

Sec. 419. In each organized county at the first general election held after the admission of the state of South Dakota into the union, and every two years thereafter, there shall be elected a clerk of the court, sheriff, county auditor, register of deeds, treasurer, state's attorney, surveyor, coroner and superintendent of schools, whose terms of office respectively shall be two years, and except the clerk of the court, no person shall be eligible for more than four years in succession to any of the above named offices. (Sec. 5 of Art IX, Const.)

Sec. 420. All county, township and district officers shall be electors in the county, township or district in which they are elected; Provided that nothing in this section shall prevent the holding of school offices by any person as provided in Sec. 9, Article VII; and provided, further, that the legislature shall have authority to prescribe additional qualifications for superintendent of schools, not inconsistent herewith. (Sec. 7, Article IX, Const., as amended by election in 1906.)

Sec. 421. The legislature shall, by general law, exempt from taxation, property used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation. (Sec. 6 of Article XI, Const.)

Education of Indian Children

Sec. 422. Must Compel Attendance of Indian Child] That whenever the government of the United States erects or causes to be erected and maintained, a school for general educational purposes within the state of South Dakota, and the expense of the tuition, lodging, food and clothing of Indian pupils therein is borne by the United States, it shall be compulsory on the part of every parent, guardian, or other person in the state of South Dakota, having control of an Indian child or children between the ages of six and eighteen years, eligible to attend said school, to send such child or children to said school for a period of nine months, or during the annual term, unless such child or children is or are excused from such attendance by the county superintendent of schools showing that the bodily or mental condition of such child or children has been and is such as to prevent his or her or their attendance at school or application at study for the period required, or that such child or children is or are taught in the public school, private school or other school in such branches as are usually taught in the public schools; provided that in case the government of the United States does not make provision for the free transportation of such child or children to and from their homes to said school, then he, she or they shall not be liable to the provision of this act, unless they reside less than ten miles from such school. (Session Laws, 1907.)

Sec. 423. Duty of Principal or Superintendent] It shall be the duty of all principals or superintendents of the school or schools mentioned in this act, before attempting to enforce the provisions of the act, hereinafter mentioned; to serve, or cause to be served, a demand for the attendance of certain children naming them and also designating the school at which their attendance is required, upon the parent, guardian or other person having charge of said child or children as may be eligible to attend such school over which he has charge and a copy of this act on such parent, guardian, or other person having charge of said child or children and such person shall within ten days deliver said child or children at said school or to the principal or superintendent thereof, or furnish satisfactory proof that the bodily or mental condition of said child or children will not admit of attendance. (Sessions Laws, 1907.)

Sec. 424. Failure to Comply With Demand—Duty of Superintendent] If at the expiration of ten days after such notice or demand, the parent, guardian, or other person having charge of said child or children shall have failed or refused to comply with this act, the principal or superintendent shall commence proceedings in the name of the state for the recovery of the fine hereinafter provided before any court having jurisdiction. (Session Laws, 1907.)

Sec. 425. Penalty] Any parent, guardian or other person having control or charge of any Indian child or children failing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and shall be liable to a fine of not less than ten dollars (\$10) nor more than twenty-five dollars (\$25), and imprisonment in the county jail for fifteen days for the first offense and not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) and imprisonment in the county jail for thirty days for the second offense and each subsequent offense, besides the cost of the action. It is provided further, that in emergency cases proceedings may be begun at the expiration of three days after each refusal of the parent, guardian or other person having charge or control of said child or children to comply with the demand of said principal or superintendent. (Session Laws, 1907.)

Sec. 426. Fines—Where Paid] All fines collected under the provisions of this act shall be paid into the county treasury, the same to be placed to the credit of the general school fund. (Session Laws, 1907.)

Sec. 427. Duty of Sheriffs and Officers] It shall be the duty of all sheriffs, constables, policeman, town and city marshals in the state to take cognizance of this act and assist principals and superintendents of schools in carrying out its provisions. (Session Laws, 1907.)

Sec. 428. Violation—Penalty] Any person or persons who shall directly or indirectly persuade, advise or intimidate in any manner, the parent, guardian or other person having control or charge of any Indian child or children from complying with the demand of a principal or superintendent of a school who is endeavoring to carry out the provisions of this act shall be guilty of the same offense and shall be subject to the same penalty as the parent or guardian; provided, that this section shall not apply to the attorney or legal adviser of any parent or guardian in giving advice in his legal capacity. (Session Laws, 1907.)

Sec. 429. Justices of Peace to Have Jurisdiction] Any justice of the peace within the county where the child or children live shall have jurisdiction to try and determine action brought under this act.

Sec. 430. Persons May Intervene and Become Parties to an Action—When] That hereafter any person, firm or corporation entering into a formal contract with the state, any county or municipal corporation, school district or independent school district in the state of South Dakota for the construction of the state, any county or municipal corporation, school building, or for repairs upon any school building, shall be required, before commencing such work to execute the usual penal bond for the faithful performance of said contract with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of work provided for in such contract; and any person, firm or corporation who has furnished labor or materials used in the construction or repair of any school building and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by such state, county, municipal corporation, school district or independent school district on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of such state, county, municipal corporation, school district, or independent school district, the remainder shall be distributed pro rata among such intervenors. (Session Laws, 1907.)

Sec. 431. Suit May be Brought—When] If no suit should be brought by such state, county, municipal corporation, school district or independent school district within six months from the completion and final settlement of such contract, then the person or persons supplying the contractor with labor and materials shall, upon application thereof, and furnishing affidavit to such state, county, municipal corporation, school district or independent school district, that labor or materials for the prosecution of such work has been supplied by him or them and payment for which has not been made, be furnished with

certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of such state, county, municipal corporation, school district or independent school district in the circuit court in the county in which said contract was to be performed and executed and not elsewhere, for his and their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution provided, that where suit is instituted by any of such creditors on the bond of the contractor 't shall not be commenced until after the complete performance of said contract and final settlement thereof and shall be commenced within one year after the performance and final settlement of said contract, and not later; and provided, further, that where suit is so instituted by a creditor or creditors only one action shall be brought, and any creditor may file his claim in such action and be made a party thereto within one year from the completion of the work under said contract, and not later; and provided, further, that costs shall not be taxed in said suit against such state, county, municipal corporation, school district or independent school district. If the recovery on the bond should be inadequate to pay the amounts found due all such creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on such bond may pay into court for distribution among such claimants and creditors the full amount of the sureties' liability, to-wit: the penalty named in the bond less any amount which said surety may have had to pay to such state, county, municipal corporation, school district or independent school district by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability; provided, further, that in all suits instituted under the provisions of this act such personal notice of the pendency of such suit, informing them of their right to intervene, as the court may order shall be given to all known creditors, and in addition thereto such notice shall be given by publication in some newspaper of general circulation, published in the county where the contract is being performed for at least three successive weeks, the last publication to be at least three months before the time limited therefor. (Session Laws, 1907.)

Sec. 432. Fees] That all county and state officers for whose services a salary is provided by law, shall receive no compensation for their services other than that so provided; and all fees received by them under any of the existing provisions of law shall be paid by the officer, so receiving the same, into the county or state treasury, as the case may be, at the end of each and every month, and when not under any provision of law credited to a special fund, shall be placed to the credit of the general fund of the county or state. Provided, however, that this section shall not be so construed as to in

any manner affect any officer who receives no salary other than the fees paid for his services. (Sec. 1862, ol. C.)

Sec. 433. Sale of Prohibited—Where] No license shall be granted for the sale of intoxicating liquors at any place within one-third of a mile of any college or academy in the state of South Dakota, which gives instruction in regular classical and scientific courses, and any license issued or granted for the sale of intoxicating liquors within one-third of a mile of any such college or academy shall be revoked, and the sale of liquor within such prescribed territory be enjoined by the circuit court upon proper application therefor; provided that this act shall not be construed to apply to any school or college devoted simply to instruction in business methods. (Session Laws, 1907.)

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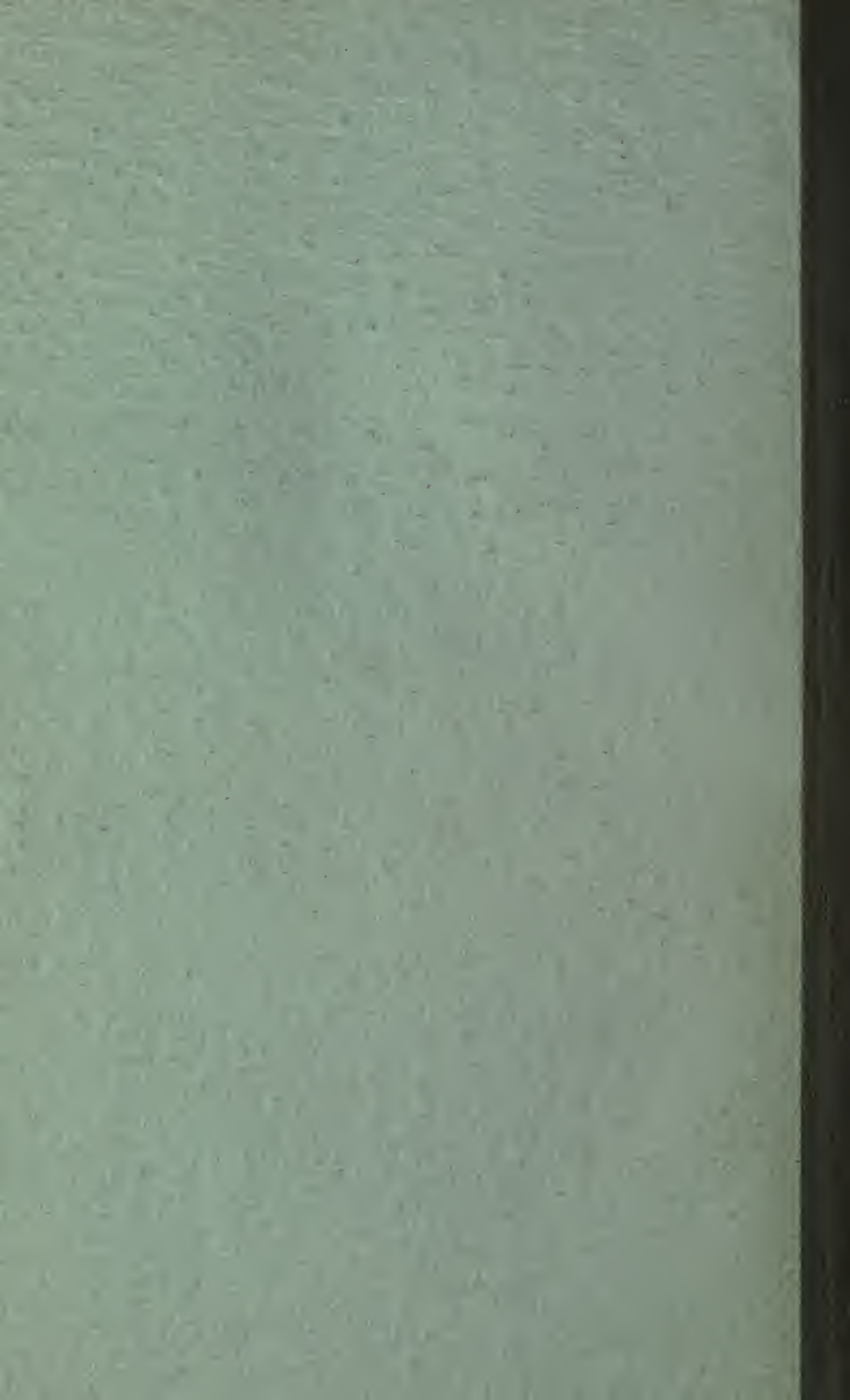
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